

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
SAVANNAH DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	
	)	CASE NOS.
PABLO RANGEL-RUBIO,	)	4:18-CR-00274-LGW-BWC-1
JUAN RANGEL-RUBIO,	)	4:18-CR-00274-LGW-BWC-2
HIGINIO PEREZ-BRAVO,	)	4:18-CR-00274-LGW-BWC-3
	)	
_____ Defendants.	)	

CONTINUATION OF MOTIONS HEARING  
BEFORE THE HONORABLE BENJAMIN W. CHEESBRO  
June 25, 2021; 10:27 a.m.  
Savannah, Georgia

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P R O C E E D I N G S

(Call to order at 10:37 a.m.)

THE COURT: Ms. Mixon, please call the next case.

THE CLERK: Case Number 4:18-CR-274, United States of America versus Pablo Rangel-Rubio, Juan Rangel-Rubio, Higinio Perez-Bravo, Tania Groover for the Government, Chris Howard for the Government, Jeffrey Ertel, Dow Bonds, George Asinc, Mark Olive, and Robert Paul Phillips for Defense and we have Michelle Gonzales and Julia Davis as our interpreters today.

THE COURT: Thank you, Ms. Mixon. If you would please go ahead and administer the oaths.

THE CLERK: Please raise your right hand to be sworn.

(Interpreters sworn.)

INTERPRETER GONZALES: I swear.

INTERPRETER DAVIS: I do.

THE COURT: Please state your full name and spell your last name for the record.

INTERPRETER GONZALES: Michelle Gonzales,  
G-o-n-z-a-l-e-s.

INTERPRETER DAVIS: Julia Davis D-a-v-i-s.

THE CLERK: Thank you.

THE COURT: Well, Ms. Davis, Ms. Gonzales, thank you again for your service. I will ask that you please speak up and let me know if you need a break, if you need anyone to repeat themselves or to clarify anything that a witness said.

1 Can you do that for me, please?

2 INTERPRETER DAVIS: Yes, Your Honor.

3 INTERPRETER GONZALES: Yes, Your Honor.

4 THE COURT: Thank you, and everyone who is presenting  
5 here today, I will also encourage you to remain conscientious of  
6 the interpreters who are serving here today and our court  
7 reporter and the fact that we have some participants joining by  
8 video. All of that requires you to speak slowly, clearly and to  
9 not talk over one another.

10 Ms. Groover, ready to proceed.

11 MS. GROOVER: Yes, Your Honor.

12 THE COURT: Counsel for defendants, we had to continue  
13 this hearing due to the newly enacted federal holiday that  
14 occurred last Thursday when we were in the midst of this  
15 proceeding.

16 Based on my recollection and review of my notes, we were  
17 in the midst of the evidentiary presentations related to  
18 defendant's motions regarding the admissibility of certain  
19 custodial statements, and as I understood it, Mr. Martin, you  
20 have one additional witness that you intended to present and  
21 that would be Dr. Leonard; is that correct?

22 MR. MARTIN: That's correct, Your Honor.

23 THE COURT: Are you prepared to proceed with Dr. Leonard  
24 at this time?

25 MR. MARTIN: Yes, Your Honor.

1 THE COURT: Go ahead.

2 MR. MARTIN: We call Dr. Robert Leonard. He is on the  
3 virtual screen, Your Honor.

4 THE CLERK: Mr. Leonard, can you hear me?

5 THE WITNESS: I can.

6 THE CLERK: If you will please raise your right hand to  
7 be sworn.

8 DR. ROBERT LEONARD,  
9 having been first duly sworn, was examined and testified as  
10 follows:

11 THE CLERK: Thank you. Please state your full name and  
12 spell your last name for the record.

13 THE WITNESS: Robert Leonard, L-e-o-n-a-r-d.

14 THE CLERK: Thank you.

15 MR. MARTIN: Your Honor, I have turned this podium a  
16 little sideways if that's all right with you.

17 THE COURT: That will be fine.

18 DIRECT EXAMINATION

19 BY MR. MARTIN:

20 Q. Dr. Leonard, what is your profession?

21 A. I'm a professor of linguistics and the director of the  
22 graduate program in linguistics for forensic linguistics at  
23 Hofstra University in New York.

24 Q. And what is linguistics simply, sir, and by the way, if  
25 you can't hear me at any time, please tell us know.

1 A. I can hear you. Linguistics is the science that analyzes  
2 language, usually human language, and like any science, what it  
3 does is construct theories to explain the non-random  
4 distribution of the data.

5 Excuse me, I'm seeing someone -- are you interpreting?

6 Q. Yes, there's a woman standing there who is interpreting.

7 A. Should I be seeing you instead, Mr. Martin?

8 Q. I don't know if they can arrange that or not.

9 A. It's fine with me. I just wanted, before we started, to  
10 have everything accurate.

11 THE COURT: Dr. Leonard, unfortunately it's difficult  
12 for the camera angle to pick up the entire courtroom. Mr.  
13 Martin is here in front of the screen that you are appearing on  
14 and he is just off camera from the vantage point that you have.  
15 If we need to reorient that, we will.

16 THE WITNESS: That's fine, Your Honor. Thank you very  
17 much. I just wanted to make sure things were right. So I  
18 can --

19 Q. (By Mr. Martin) Go ahead.

20 A. Pardon?

21 Q. I can see you fine but apparently I can see what the  
22 screen says.

23 A. So in English we have two main meanings for the word  
24 "linguist." One is someone who, for example, like our  
25 translators or interpreters, is good at several languages and

1 then there are linguists that are academic scientific  
2 linguistics who analyze language, and linguistics, although for  
3 some reason it's not very well-known, it's recognized as a  
4 science in virtually any university. There will be a dean of  
5 linguistics and most universities have majors and minors in  
6 linguistic-related field.

7 Their academic association scores are in peer-reviewed  
8 journals, and forensic linguistics is the application of that  
9 science to issues of the law that deal with language.

10 Q. Now, how long have you taught linguistics at Hofstra  
11 University?

12 A. Since 1990.

13 Q. And does Hofstra University have a doctorate program in  
14 linguistics and forensic linguistics?

15 A. No. We have a master's program and we have a BA, MA and  
16 we have an MA-JD where people get their master's and their law  
17 degree, working at...

18 Q. Tell us briefly a little bit about your educational  
19 background.

20 A. I have a bachelor in sociology from Columbia College and  
21 from Columbia graduate school I have a master of arts, a master  
22 of philosophy and a doctorate in linguistics from there.

23 Q. By the way, just as an aside, how did you finance your way  
24 through Columbia College?

25 A. My day job was as a singer in a band, and that was a very

1 interesting extracurricular activity and, for example, I, as you  
2 and I discussed just before, I actually opened for Jimmy Hendrix  
3 at the original Woodstock.

4 Q. And that would be 19 --

5 A. And I --

6 Q. Go ahead.

7 A. Then I went back -- sorry. Then I went, I was offered a  
8 full fellowship at Columbia through to the PhD, so I quit music  
9 and went back to school and actually got my doctorate at  
10 Columbia.

11 Q. My recollection, Woodstock was 1969, so that would be,  
12 gosh, more than 40, more than 50 years ago?

13 A. Correct.

14 Q. Tell us a little bit more about the type of honors you've  
15 received over the years.

16 A. I graduated with honors. I also received a Fulbright  
17 Scholarship to do my doctoral dissertation, research abroad. I  
18 am the only non-jurist to have been asked to be a member of the  
19 Capital Case Oversight Committee during working group for the  
20 State of Arizona who they asked me on there as the only  
21 non-judge or lawyer, and that's a committee that, among other  
22 things, attempts to rework the death penalty pattern jury  
23 instructions so that they are most understandable to the average  
24 juror. I'm also on the editorial board of Oxford University  
25 Press book series *Language and the Law*.

1 Q. Have you published in your area?

2 A. Yes, I have. Two recent publications might be of note, a  
3 *Law Journal* article on forensic linguistics and the different  
4 types of cases that it is applicable to, and I also wrote the  
5 forensic linguistic chapter to the *Handbook of Behavioral*  
6 *Criminology*.

7 Q. Are you on the editorial board of any publications?

8 A. Yes. As I was saying before, I am on the editorial board  
9 of the Oxford University Press series *Language and the Law*.

10 Q. Over the years, have you assisted law enforcement, FBI in  
11 particular, and maybe Homeland Security, regarding forensic  
12 issues?

13 A. Yes. I was recruited to help train FBI Behavioral  
14 Analysis Unit agents at Quantico and then with them train agents  
15 from quite a variety of other US agencies and allied agencies.  
16 I just recently trained all the behavioral unit agents who deal  
17 with language data.

18 I'm hearing noise. I was wondering.

19 And over the past, say, 18 years, I've worked for the  
20 Joint Terrorist Task Force, Department of Justice, Department of  
21 Homeland Security, the DEA, FBI, as I said, and I've also been  
22 employed by the British Government in their intelligence  
23 agencies and a variety of the European countries.

24 Q. Have you been qualified as an expert in forensic  
25 linguistics in state and federal courts?

1 A. Yes, about 28 or 29 times and in 15 state courts. That is  
2 courts in 14 states and seven federal districts.

3 Q. Have you testified in any international settings?

4 A. Yes. I testified before the World Bank, the tribunals...

5 Q. And did you provide to me a --

6 THE COURT: Mr. Martin, just a moment.

7 THE REPORTER: He keeps cutting in and out.

8 THE WITNESS: If there are other folks who have their  
9 microphones on, that might be the answer to why it's cutting in  
10 and out because I'm in a very, very silent room.

11 THE COURT: Let's move a little bit more slowly, Mr.  
12 Martin. It sounds like there's a good connection although once  
13 you get to going a little faster, it seems to cut in and out, so  
14 let's just take our time.

15 MR. MARTIN: You heard that, Dr. Leonard. Let's go as  
16 slow as possible.

17 Q. (By Mr. Martin) Did you provide to me prior to today an  
18 accurate, current CV for you?

19 A. Yes, I did.

20 MR. MARTIN: Your Honor, I would offer Defendants'  
21 Exhibit 7. I've given a copy of it to counsel.

22 THE COURT: Any objection?

23 MR. HOWARD: Your Honor, we have no objection both to  
24 the CV and to the report which I think counsel is about to admit  
25 as well.

1 THE COURT: That's correct.

2 Q. (By Mr. Martin) Dr. Leonard, did you prepare a report for  
3 me summarizing your background and your conclusions regarding  
4 this case?

5 A. Yes.

6 MR. MARTIN: I would also offer Defendants' Exhibit 6  
7 which is that report which was previously filed with our motion.

8 THE COURT: Exhibit 6 and Exhibit 7 are admitted.

9 Q. (By Mr. Martin) We talked a little bit about linguistics  
10 earlier. Can you expand a little bit about the science of  
11 linguistics that you're an expert in?

12 MR. MARTIN: Your Honor, by the way, I should do this.  
13 I would like to offer Dr. Leonard as an expert in linguistics  
14 and in particular forensic linguistics.

15 THE COURT: Any objection?

16 MR. HOWARD: No, Your Honor.

17 THE COURT: He is admitted as an expert in forensic  
18 linguistics.

19 Q. (By Mr. Martin) Dr. Leonard, I will try to go slowly. We  
20 talked a little bit about linguistics before. Tell us a little  
21 bit more about the science of linguistics and in particular  
22 forensic linguistics?

23 A. Well, especially, related to the present case, we, as  
24 linguists, analyze not only language and structures, but we also  
25 analyze communicative competence, that is, not just the ability

1 to form sentences but to use them and understand them in context  
2 and how speakers and writers are communicating or not  
3 communicating using language in specific social contexts to  
4 specific audiences because, while we may be able to communicate  
5 in one context, we may not be able to communicate in others.

6 So a first procedure in trying to assay communication is  
7 to determine the linguistic content, which means the linguistic  
8 ability demanded of the hearers, so to do that, we look at  
9 vocabulary, syntax, semantics and the jargon, the complexity or  
10 simplicity of sentences and so on.

11 Everyone uses a different set of their linguistic ability  
12 to different audiences, so a mother may speak one way to her  
13 six-year-old but she will certainly speak a different way to her  
14 colleagues at work, and plumbers have their own internal jargon,  
15 which is very useful among plumbers, lawyers do, linguists do.

16 But when we try to use this vocabulary set outside of our  
17 own group, sometimes there's a lot of miscommunication. For  
18 example, if I were writing a report, the one that you just  
19 submitted, to other linguists and not to, say, The Court, I  
20 would be using terms like "discourse," "sequencing," "the  
21 well-formedness of perlocutionary speech acts," which  
22 unfortunately will be very difficult for someone to translate,  
23 and "discourse structures," "morphology," et cetera.

24 So we are very aware of what we call register, and a  
25 register is a variety of language that is used by a specific

1 group in a specific context.

2 Q. Does the science of linguistics, forensic linguistics, in  
3 particular follow -- excuse me.

4 INTERPRETER DAVIS: Excuse me, Your Honor.

5 MR. MARTIN: We're having a little trouble with the  
6 interpreter a second.

7 THE COURT: I will note for the record it appears to be  
8 an issue with the hardware that may be a problem.

9 Ms. Davis, Ms. Gonzales, is that an issue with the  
10 headsets?

11 INTERPRETER DAVIS: The person using the headset thought  
12 that it had to be with our transmitters, yes, Your Honor. I  
13 have not been able to verify because by the time I got over  
14 there it was working again, but it's possible.

15 THE COURT: If you would please inform the defendants  
16 who are benefiting from the aid of those headsets to raise their  
17 hands if they have any further difficulty with those pieces of  
18 technology.

19 INTERPRETER DAVIS: I believe they were just so informed  
20 by you, Your Honor.

21 THE COURT: Thank you.

22 You can proceed, Mr. Martin.

23 Q. (By Mr. Martin) Does the science of forensic linguistics  
24 and linguistics in general follow scientific principles?

25 A. Yes, absolutely.

1 Q. Explain that to us, please.

2 A. Well, one looked for the, as all scientists, we attempt to  
3 explain the non-randomness of the data, and to do this, we  
4 establish theories, overarching theories, and then test  
5 hypotheses within those theories to see which hypothesis best  
6 explains or even predicts the non-randomness of the distribution  
7 of the data.

8 Q. Let me ask you -- I may have mis -- go ahead.

9 A. So here, for example, since the research question was --  
10 excuse me -- Mr. Perez-Bravo's ability to understand the Miranda  
11 warning and the interaction, I and my Mexican Latin expert  
12 compared the types of speech that were used in his interview and  
13 interrogation with the types of registers that he would, from  
14 demographic information, likely to have access.

15 Q. Just to remind us, "register" means like different levels  
16 of education, socioeconomic background, job experience and so  
17 forth?

18 A. Yes. Register means the type of language that a specific  
19 group of people use in a situation, so, for example, a plumber  
20 speaking to another plumber will likely not be totally  
21 understood by me and similarly we have this hidden in the  
22 profession of linguists, et cetera.

23 Q. I probably didn't ask you this before but let me do it  
24 now. You have your Hofstra University has been approved by the  
25 New York Regents for an advanced degree in forensic linguistics;

1 correct?

2 A. Yes. We are empowered by the Regents of the State of New  
3 York to grant degrees in linguistics.

4 Q. And the journals which you've published and written in are  
5 recognized journals in the field of linguistics and they are  
6 peer-reviewed articles; is that correct?

7 A. That's correct.

8 Q. Meaning they would have to be reviewed by your peers  
9 before they would be published; correct?

10 A. Correct.

11 Q. Now, I think you mentioned it, but what did I ask you to  
12 do in connection with Mr. Perez-Bravo's case?

13 A. I was asked to review Mr. Perez-Bravo's interrogation and  
14 especially analyze the likelihood of his ability to understand  
15 his Miranda rights.

16 Q. And what materials were available to you? What did I  
17 provide you?

18 A. The video and transcript of his interrogation.

19 Q. And those were the sole materials that you reviewed using  
20 your scientific principles to analyze; is that correct?

21 A. That's correct.

22 Q. And did you have also available to you various different  
23 resources to assist you, the recognized resources to assist you  
24 in analyzing that material?

25 A. Yes. Among other things, I researched in the *Dictionary*

1 of the Royal Spanish Academy, the Panhispanic Spanish Legal  
2 Dictionary, A Frequency Dictionary of Spanish -- that's the  
3 title of it -- A Frequency Dictionary.

4 Q. What does that mean? What does that dictionary tell us?

5 A. In addition to the other few sources that I was about to  
6 talk about are scientific analyses of Spanish according to what  
7 groups used what words, what are the most frequent words used in  
8 Spanish, what are the least frequent, what are the more  
9 technical and least technical.

10 This is something that linguists and lexicographers,  
11 dictionary makers, and corpus linguists, linguists who construct  
12 database and corpora, plural of corpus, for specific purposes,  
13 research and construct, so that we have actual data, what's  
14 called authentic data, that comes from people's keyboards, pens  
15 and mouths of what their actual use is in any particular  
16 language and in any particular register.

17 Q. Okay, now, did you also consult with -- did I cut you off?  
18 Were there other --

19 A. Yes, let me -- yes, if you wouldn't mind, I will enumerate  
20 the other sources.

21 Q. Please do.

22 A. The -- the CREA, C-R-E-A, Oral Corpus of Spanish, the  
23 CORPES C-O-R-P-E-S, of 221st Century Spanish, the  
24 Sociolinguistic Corpus of Mexico City Spanish, the Wordreference  
25 synonyms dictionary and the Google Ngram synonym comparison

1 across current and recent generations.

2 Q. Did you also consult with experts in your field that, on  
3 these issues, especially the Spanish language issues?

4 A. Yes. I consulted a former student of mine who now has her  
5 PhD from Indiana University in both linguistics and Spanish  
6 linguistics and who is an expert in Mexican and Central American  
7 dialects. She resides in Mexico City now.

8 Q. Is that something that experts in your field do, they  
9 consult other experts in coming to a conclusion?

10 A. Yes, routinely, especially when we need specific language  
11 or specific areas of the language.

12 Q. Excuse me, it's cutting off. Can you hear him? I was  
13 talking to the interpreter. Maybe I should address The Court.

14 INTERPRETER GONZALES: The interpreter is interpreting  
15 the words that she does hear.

16 Q. (By Mr. Martin) So tell us generally how you went  
17 about -- I think you gave us some information already and how  
18 you went about analyzing scientifically the forensic issues in  
19 this case, specifically the quality of the Miranda warnings and  
20 the ability of Mr. Perez-Bravo to understand them.

21 A. Well, we looked at the conversational back and forth of  
22 the interview, and the first thing we looked at was the  
23 vocabulary used in the Miranda warning and the complexity of the  
24 language used in the Miranda warning, and before I get to the  
25 Spanish, I want to mention that Miranda warnings have been

1 studied very intensively.

2       There's quite a literature on the Miranda warnings in  
3 English, for example, and the same principles apply to Spanish,  
4 so, for example, a bar to understanding is syntax and  
5 complexity, for example, having sentences that are composed not  
6 of simple sentences but of multiple clauses, and one example in  
7 this as an analog typical to the Miranda that was administered  
8 to Mr. Perez-Bravo, we have six layers of imbedding in the  
9 English sentence. "If you cannot afford to hire a lawyer then  
10 one will be appointed to represent you before any questioning if  
11 you would want." That is an extremely complicated sentence,  
12 and, as I say, there's been a lot of research on the  
13 understandability of Miranda both in English and in Spanish.

14       And when we remember that 37 percent of the adult inmates  
15 in the United States function at or below a sixth grade reading  
16 level, it is not surprising that the simpler the sentence --  
17 that is not that sentence -- is most well understood.

18       So, for example, in the *Journal of Human Behavior*,  
19 research was done and the -- excuse me -- Roger, et al., found  
20 that a defendant with more than... did not comprehend the  
21 Miranda better than those with brief criminal histories and in  
22 English.

23       THE COURT: Dr. Leonard.

24       MR. MARTIN: Excuse me, stop a second.

25       THE COURT: Ms. Gilbert, are you having trouble?

1 THE REPORTER: Yeah, he's cutting out.

2 THE CLERK: Your Honor, we have someone coming from DCS  
3 to see if they can get some better audio for the witness.

4 THE COURT: Everyone, we are going to stay in session.  
5 Just bear with me for a couple of moments. We're going to see  
6 if we can try to establish a bit more reliable connection with  
7 Dr. Leonard.

8 MR. PHILLIPS: Is it possible that Dr. Leonard rocking  
9 back and forth, that might be --

10 THE COURT: Thank you, Mr. Phillips.

11 Dr. Leonard, the comment was made that, as you move a  
12 lot in the video, that may require increased bandwidth which can  
13 reduce the audio quality, and so to the extent that you're able,  
14 if you can try to limit that, that may help.

15 THE WITNESS: Yes, Your Honor.

16 MR. MARTIN: Ms. Groover suggested the possibility of  
17 getting a phone connection. I don't know if that's possible.

18 THE COURT: Before we explore that, Dr. Leonard, do you  
19 happen to have any sort of headset that you could use while  
20 you're participating in the hearing?

21 THE WITNESS: Yes. We also, Your Honor, if I may  
22 suggest, we could turn off my video.

23 THE COURT: Let's try the headset first, and if that  
24 doesn't resolve it, then we may pursue that as well.

25 THE WITNESS: Let me try to...

1 THE COURT: As you held up your microphone, the quality  
2 was better.

3 THE WITNESS: Let me try to lean into the computer for a  
4 second.

5 THE COURT: Go ahead, Mr. Martin.

6 Q. (By Mr. Martin) Dr. Leonard.

7 A. Yes. I was saying that the study in England who has their  
8 own version of what we would call Miranda, 97 percent of  
9 detainees claimed to understand their warnings but very few  
10 could demonstrate comprehension, and that's a very important  
11 term, "demonstrate comprehension."

12 The least effective way of assessing comprehension is to  
13 ask someone "Do you understand?" Imagine if we granted licenses  
14 to practice law or driving or getting out of sixth grade by  
15 simply asking the subject, "Do you understand the material" and  
16 then accepting when they say yes.

17 Clearly the only way to assess understanding is to have  
18 the person demonstrate understanding by questioning and having  
19 them explain whatever the area, absolutely the area there. It  
20 is important, except Miranda, sometimes. There are many people  
21 who do do that.

22 Q. Dr. Leonard, while you mentioned it, let me back up one  
23 second. I also provided you a copy...

24 THE COURT: One moment, Mr. Martin.

25 THE WITNESS: How about if I try here testing 1, 2, 3.

1 THE COURT: Hold on one moment, Dr. Leonard.

2 THE WITNESS: Yes, Your Honor.

3 THE COURT: Dr. Leonard, you had a headset on  
4 previously, if you could try to utilize that again.

5 THE WITNESS: I'm getting a telephone call. Is that  
6 from you folks?

7 THE COURT: No, Dr. Leonard.

8 THE WITNESS: Very good. Okay, now I have my headset  
9 on.

10 THE COURT: And you had held that microphone a bit  
11 closer, and it appeared to pick you up better previously.

12 THE WITNESS: All right. How is that, is it any better?

13 THE COURT: Unfortunately, that's not resolving the  
14 issue.

15 Mr. Martin any objections to Dr. Leonard participating  
16 by phone and not dialing in by video?

17 MR. MARTIN: No, if it's clearer. Anything that will  
18 help us because the subject is complicated, and I want to make  
19 sure everybody can hear it.

20 THE COURT: Any objection, Ms. Groover?

21 MS. GROOVER: No, Your Honor.

22 THE COURT: I'm going to take a short recess rather than  
23 conducting all this on the record.

24 Dr. Leonard, if you will just stay on and we have an  
25 individual here from our court's IT staff who may be able to

1 help you with trying to establish a better audio connection.  
2 Ideally I would prefer you would conduct this by audio and  
3 video, but if during the recess, we identify that only audio  
4 will work reliably, that will be a suitable alternative. We  
5 will wait to restart until you've evaluated what the best option  
6 is of conducting the hearing.

7 THE WITNESS: As you wish. Your Honor, but may I  
8 suggest that I've been teaching using this kind of media over a  
9 year and a half and what we sometimes do as I think was  
10 suggested have the audio on the phone and then the video with no  
11 sound and that way we get both audio and video.

12 THE COURT: You all explore that during the recess, all  
13 right, Dr. Leonard.

14 THE WITNESS: Very good, thank you.

15 THE COURT: We will be in recess.

16 (Recess from 11:06 a.m. to 11:13 a.m.)

17 THE COURT: I understand we have reconfigured Dr.  
18 Leonard's connection and we think that we have a reliable audio  
19 connection now, so Mr. Martin, you can proceed with your  
20 questioning.

21 Q. (By Mr. Martin) Dr. Leonard, were you provided -- can you  
22 hear me?

23 A. I'm having trouble hearing you now, so if we can confirm  
24 with the headset, see if that will work because then I can hear  
25 you-all. Ten, nine, eight, seven, six, five, four, three, two,

1 one.

2 MR. MARTIN: I can hear you. Can you hear me?

3 THE WITNESS: I can hear you fine now. Is the same for  
4 the court reporter, you can hear me better than before?

5 Q. (By Mr. Martin) She says yes.

6 A. So I can begin.

7 Q. You trailed off a little bit in the last answer. Let me  
8 bring you back. Maybe we can get you where we are. One of the  
9 things that we were, one of the documents that I provided you  
10 was a Spanish language translation of the Miranda warnings; is  
11 that correct?

12 A. Yes.

13 Q. You said yes?

14 A. I did say -- I did say yes. Mr. Martin, I was in the  
15 middle of another answer.

16 Q. Yeah, I think we were talking about the multiple clauses.

17 A. Yes. Oh, shall we revisit that now?

18 Q. Well, let me ask you a question and direct your attention.  
19 The transcript indicates that the Agent Miranda read to him, to  
20 Mr. Perez-Bravo, in Spanish. This is what the English  
21 translation said, "If you can't pay an attorney one will be  
22 provided before we ask you anything if you wish." Does that  
23 sentence have three different clauses?

24 A. Yeah. It does and the -- that's quite a complicated  
25 sentence in Spanish, "si no puedo pagar un abogado, se le

1 proporcionar uno antes de que le hagamos cualquier p regunta, si  
2 ud lo desea."

3 So if you can't pay an attorney, one will be  
4 "proporcionar," "provided," for you before the occasion of being  
5 asked, we ask any questions if you want it, "si ud lo desea."

6 Q. And you talked about register a little earlier. Someone  
7 like Mr. Perez-Bravo is tested at 75 IQ and comes from a low  
8 education background in a rural area of Mexico. Is that a type  
9 of sentence that would be complicated for him to understand?

10 A. Yes, and what I was saying before about the research done  
11 on English speakers, for example, we ended with my saying that a  
12 2007 study of British detainees had 97 percent of them claiming  
13 that understand but very few could actually demonstrate  
14 comprehension, and a study in 2016 in the United States of 80  
15 pretrial detainees 48.7 percent did not consider the long-term  
16 consequences of waiving the Miranda rights and 43.8 percent  
17 could not generate a single long-term reason for exercising  
18 their right, and the reverse, of course, the more vulnerable  
19 population, which have been much studied, juveniles, people with  
20 mental health problems, cognitive deficits, and IQ scores below  
21 75, so that from the study, so, yeah, carry on.

22 Q. So let's talk now about the Miranda warnings that was read  
23 to Mr. Perez-Bravo in Spanish.

24 Did you and people you consulted with and the books you  
25 consulted and the individuals you consulted, were there

1 particular problems with particular words in that Miranda  
2 warning in Spanish?

3 A. Yes. For example, in addition to syntactic complexity, in  
4 terms "tribunal," which is a cognitive of English "tribunal" and  
5 "proporcionar," which is a...

6 THE REPORTER: I don't understand what he's saying.

7 MR. MARTIN: The court reporter is not getting you  
8 understandably. Your Honor, what do you want to do?

9 THE COURT: Dr. Leonard, try to repeat that answer,  
10 please.

11 THE WITNESS: Yes. Two terms that we noticed in  
12 addition to the syntactic complexity are the Spanish word,  
13 "tribunal" -- that's "tribunal" -- and the word is the  
14 translation of "provide," the Spanish word "proporcionar." Is  
15 that all right? I'm asking the court reporter.

16 MR. MARTIN: She says yes.

17 THE WITNESS: So these are terms that are in a register  
18 not likely to be understood by Mr. Perez-Bravo.

19 Q. (By Mr. Martin) So what would be a word -- let's say with  
20 "tribunal," which is, is that a word that -- is there a  
21 different word that may have been understandable to him in  
22 Spanish?

23 A. Yes. Hold on one second, please. I'm looking for my  
24 notes. Yes, so alternatives, according to research, that would  
25 be more likely to be understood would be instead of the

1 "tribunal" would be "corte" and instead of "proporcionar" we  
2 could have perhaps have had (unintelligible) which means...

3 THE COURT: Dr. Leonard, you need to hold your  
4 microphone up the way that you were before. That was the only  
5 way we had a good audio for you.

6 THE WITNESS: Will do. Should I repeat that?

7 THE REPORTER: Yes.

8 Q. (By Mr. Martin) Dr. Leonard, when you use these words in  
9 Spanish, why don't you spell them for the court reporter, so  
10 she will know exactly what you're meaning.

11 A. Very good. So instead of the word t-r-i-b-u-n-a-l, which  
12 the translation of the English word "court," the word c-o-r-t-e,  
13 research would show, would be a better understood alternative  
14 because the first word, the word that's actually used, is very  
15 specific legal term characterized by high formalities and high  
16 education necessary for use in oral speech.

17 It's absent in the oral speech of lower economic class  
18 Spanish speakers in Mexico. And that's why the term c-o-r-t-e  
19 would likely be a better alternative.

20 Then the other p-r-o-p-o-r-i-o-n-a-r, which is the  
21 translation for "provide," is a frequent term in written  
22 material, especially outside of the legal language, but it's  
23 also characterized by high education and high formality. It's  
24 not common in oral speech, and in the study of lower economic  
25 classes of in Mexico, it was absent. It did not appear. It's

1 much more frequent synonyms, o-f-r-e-c-e-r, "ofrecere," or even  
2 f-a-c-i-l-i-t-a-r, Spanish, "facilitar," would be better  
3 understood alternative.

4 Q. Now, given those word problems and the fact that the  
5 sentence includes several clauses, would that be something that  
6 would be extremely difficult for Mr. Perez-Bravo given his  
7 background to understand?

8 A. I would say so because here we have several features  
9 coming together all of which prevent comprehension, and let me  
10 point out that comprehending a sentence is a complex job, and  
11 one must comprehend it in its entirety, and if one is  
12 interrupted in one's understanding it is like a car going off  
13 the rails. You don't just jump back on after the word that  
14 gives you problems.

15 I studied reading intensively for years at a local  
16 community college and syntactic complexity plus vocabulary that  
17 is not familiar or totally absent in one's own language is a  
18 very bad mixture if you want to be comprehensible.

19 Q. If Mr. Perez-Bravo has explained to a neuropsychologist  
20 who has already testified that he did not understand that he  
21 could get a lawyer for free, what does the forensic linguistic  
22 science tell us about that sentence and whether that's an  
23 accurate conclusion?

24 A. Right. Well, I can't know exactly what another human  
25 being is understanding or not, but I can certainly analyze the

1 language and compare it to scientific studies that have mapped  
2 out what people of a certain demographic actually use and  
3 actually understand, and one thing I can say is that the Spanish  
4 terms certainly do not in and of themselves include what we call  
5 entailing any free provision.

6 So there's nothing in the Spanish content of those two  
7 words, of the words that is the translation of "provide," I  
8 mean, that would suggest it would have no cost.

9 Q. Now, you mentioned this earlier but let's repeat it.  
10 According to the transcript -- and you've reviewed that -- the  
11 only time that Mr. Perez-Bravo is told his Miranda rights is on  
12 Page 10 when he is read that Spanish language translation we  
13 talked about.

14 Afterwards, Mr. Perez-Bravo is repeatedly asked by the  
15 agents in good faith, "Do you understand your rights?" Tell us  
16 what you can make of that, to which he responds yes?

17 A. Right. Well, also the -- he does not get to answer the  
18 question about whether he is willing to speak to them now  
19 without a lawyer, as I -- earlier testimony pointed out, because  
20 two officers, who again appear to be acting in absolute good  
21 faith, interrupt and not give him an opportunity to say that.

22 Would you ask me that question again? I think I lost the  
23 thread.

24 Q. Well, what do we make of the fact that after he is read  
25 his Miranda rights only one time, he is asked repeatedly, "Do

1 you understand your rights," to which he responds yes. Is that  
2 reliable information that he -- from your review of the record  
3 that he actually understood his rights?

4 A. No.

5 Q. All of his rights?

6 A. For many reasons. Several that I have already mentioned.  
7 Asking someone if they understand is one of the least effective  
8 ways of finding out if they do understand, plus whenever you're  
9 in a situation, any conversation, we have what's called  
10 preferred and dispreferred responses, which are a matter of  
11 politeness, communication and interaction.

12 So the answer yes is going to be much more preferred, and  
13 especially if you have a power differential, it is clear that  
14 the expected and desired answer is yes.

15 So all of these things combined show that asking someone  
16 "yes or no, do you understand" is not useful.

17 Q. Is not what was the word you said, "is not"?

18 A. "Useful."

19 Q. What would be a better question?

20 A. "Explain what you understand your rights to be." Indeed  
21 when he -- when Mr. Perez-Bravo asked, "What are my options,"  
22 one of the options that are not explained is that you can decide  
23 to speak to us with an attorney present, but that is not said.

24 And as a matter of fact, people have been missing the fact  
25 that Mr. Perez-Bravo said, "What if I don't want to speak to you

1 a-h-o-r-a," "now," and that's not in the translation.

2 Q. So, for example, on Page 14 of the transcript, he's asked  
3 one more time, "Are you willing to answer" and Mr. -- Agent  
4 Snipes says, "He understands his rights" and he -- Mr. Miranda  
5 says, "And you do understand your rights" in Spanish and his  
6 response is "Yes, yes, as far as the questions you're going to  
7 ask I'm not -- I'm not offended or anything; I don't -- I  
8 haven't done anything." What do you make of that?

9 A. Well, I think that the language evidence shows that he  
10 understood his ability to not answer any questions, but remember  
11 that one of his main motivations is that he, of course, to him  
12 gets to ask, "Why am I here?"

13 And also it's a very odd thing to say in terms of Miranda  
14 that "You can ask me any questions you want and I will not be  
15 offended." It does not seem to be an answer to understanding  
16 Miranda rights.

17 Q. So also, just so we will know in the transcript, on Page  
18 12 of the transcript --

19 A. Yes. I've got it.

20 Q. Let me get it. "If I don't want to talk to you guys, what  
21 other option do I have?" And Agent Miranda says, "What do you  
22 mean by other options? Well, you will be -- we will get an  
23 arrest warrant and the arrest will be" -- and the transcript it  
24 says "stammer," so he's stammering -- "is still there so if you  
25 don't want to talk to us, you will just go to jail."

1           Is that a response to really understand, what he  
2 understood his rights to be?

3       A.     I didn't hear the last part of your question. Was that a  
4 response what?

5       Q.     What do you make of that interchange?

6       A.     Oh. Well, it clearly does not outline the option to have  
7 an attorney present at this time and clearly does not remind him  
8 or state that he can have an attorney at no cost to himself.

9           Instead he said, "If you don't need" -- the officer says,  
10 "If you don't talk to us, you will still go to jail," and on a  
11 global view, Mr. Perez-Bravo is actually very, very surprised to  
12 find at the end that he cannot go home.

13          He actually says, "So I can go now" and this is after this  
14 entire conversation. This is also undermining my confidence  
15 that he totally understood what was happening in this  
16 interaction, which, of course, begins with Miranda.

17       Q.     Based upon everything you know about this case, including  
18 the transcript, the recording, the Spanish language translation  
19 of the Miranda rights, the references that you've consulted, the  
20 other experts you consulted, and the language that was used,  
21 looking at it as a forensic scientist, do you believe that the  
22 Government could carry a burden to prove that Mr. Perez-Bravo  
23 understood he had a right to an attorney at no cost?

24       A.     The evidence points against it. The Warren Court said  
25 that, in their decision about Miranda v. Arizona, the person in

1 custody must --

2 MR. HOWARD: Your Honor, I'm going to object.

3 THE WITNESS: -- prior to --

4 MR. MARTIN: Excuse me, Dr. Leonard.

5 MR. HOWARD: I'm going to object to the witness reading  
6 court opinions. He answered the question, although it called  
7 for a legal conclusion and now he's reading verbatim from court  
8 opinions he's cited. He's not testifying about what -- the  
9 whole purpose of him being is to opine. He's not opining. He's  
10 just reading. That's an objection as to relevance.

11 Q. (By Mr. Martin) Well, Dr. Leonard, this is your -- I'm  
12 asking you your opinion as a forensic scientist in linguistics.  
13 I'm not asking you for a legal opinion.

14 A. Yes.

15 Q. What is your --

16 A. No, of course not.

17 Q. Go ahead.

18 A. The reason I was going to -- the reason I was going to  
19 read this short paragraph was to show what I was actually  
20 looking at.

21 Q. Yes.

22 A. And an essay.

23 Q. And what is that you were looking at?

24 A. May I continue or not?

25 MR. MARTIN: Your Honor, can he continue?

1 THE COURT: Dr. Leonard, if you will just answer what it  
2 is you were looking at in terms of the substance.

3 THE WITNESS: Certainly. I couldn't hear much of the  
4 objection, by the way. I'm looking at an article that is  
5 discussing Miranda, and there is a paragraph from Miranda v.  
6 Arizona, 1966, Page 437.

7 THE COURT: I understand, Dr. Leonard. If you will just  
8 answer in terms of your area of expertise. You were answering  
9 what it is you looked at to evaluate I believe whether he  
10 understood his rights and you were going to say where your --

11 THE WITNESS: The rights, the right of silence, that  
12 things could be used against him in court. I don't have to read  
13 it. I can just speak through that if that's preferable.

14 Q. (By Mr. Martin) That is. Go ahead.

15 A. Okay. So I would be assaying whether he would have  
16 understood that he had the right to remain silent, which I think  
17 he did. I don't know if he had a true understanding of what the  
18 consequences might have been, that he -- anything that he said  
19 could be used against him, that he had the right to talk to an  
20 attorney, have the attorney with him, that the attorney would be  
21 free, I don't think he understood that.

22 Q. Based on what you can see in the actual language being  
23 used?

24 A. Absolutely. That's all I'm working on. I'm not a mind-  
25 reader. I'm just looking at the demographics of Mr.

1     Perez-Bravo, the scientific research that has studied the  
2     language ability, vocabulary, et cetera, all of the research on  
3     the problems of it, of multi-clausal sentences, the problems and  
4     reports on how little detainees actually understand when they  
5     are asked to demonstrate understanding and then the very normal  
6     and again in total good faith, I'm sure, by the officers simple  
7     "do you understand," "yes," which is not adequate in the least  
8     in assaying understanding.

9     Q.     Agent Miranda and other agents testified, Agent Snipes, I  
10    think, Agent Rodriguez that they have used a similar form  
11    numerous times over the years and haven't had a problem with it.  
12    What do you make of that?

13    A.     Well, I'm sure they did not experience problems with it.  
14    I'm sure that they are telling us the absolute truth. The  
15    problem is what does that mean in terms of the adequacy of the  
16    warning, and some of the research that I was just citing would  
17    show that many people think they understand it and they do not  
18    and many people think they do not and yet say that they do, so  
19    that statistic is, in terms of really assaying understanding,  
20    not significant.

21    Q.     If this transcript showed that the normal procedure of, at  
22    least in this context, of Agent Miranda and Agent Snipes was to  
23    read the rights and then ask "do you understand your rights" and  
24    the person says yes, is that an adequate way to really  
25    understand what the person's -- whether the person really

1 understood all of his rights?

2 A. No --

3 Q. And --

4 A. -- it is not.

5 Q. And especially if they didn't know he had a lower IQ of 75  
6 and other issues in his life?

7 A. That exacerbates things, of course.

8 MR. MARTIN: Just one second, Judge.

9 Your Honor, that's all I have.

10 THE COURT: All right. Mr. Howard, before you begin  
11 your cross-examination, Dr. Leonard, I do have a couple of  
12 questions for you based on Mr. Martin's direct examination. Are  
13 you able to hear me all right, Dr. Leonard?

14 THE WITNESS: Yes, based on Mr. Martin's what?

15 THE COURT: His direct examination, I have a few  
16 questions.

17 You often referred to -- one moment, is there an issue  
18 with the translation?

19 MR. ASINC: He was having problems hearing and I was  
20 trying to get their attention.

21 THE COURT: Dr. Leonard, you referred to differences in  
22 registers frequently. Am I correct in my understanding that  
23 those are not rigid demarcations. It's a continuum of higher or  
24 lower; correct?

25 THE WITNESS: Yes and no, Your Honor. In terms of

1 formality, it is a continuous -- so, for example, in New York  
2 dialect, the more formal the register the more likely we are to  
3 pronounce the sound "R" after vowels, so in other words, to say  
4 lower register would be "New Yawk," Y-a-w-k. Higher register  
5 would be "New York" and there are various markers of formality  
6 that are like that that shade into one or another, so that's a  
7 continuum, but when we look at vocabulary, so I guess you could  
8 say it's a continuum because most of the words are going to be  
9 shared if it's the same language, so we have the same words for  
10 one, two, three and four, but not the same words for "provide"  
11 or "court" and/or other things.

12           Going back to my plumbing example, the parts of a sink  
13 or something are going to be vaguely understood by me but  
14 there's a lot that won't, so, Your Honor, you're a hundred  
15 percent correct that register is not a thing that exists in the  
16 real world. It's a useful concept to organize data sets.

17           THE COURT: And in terms of an individual's speaking  
18 register or comprehension register, I believe I understood your  
19 testimony to indicate that that would be influenced by a whole  
20 host of factors, education level, family, socioeconomic status,  
21 location geographically, intelligence, all of those different  
22 factors; is that correct?

23           THE WITNESS: That's correct.

24           THE COURT: So if you were to identify an individual's  
25 comprehension register as, let's just say, low, medium or high,

1 you would have a general sense of whether they would be able to  
2 understand communications in a higher register or not; correct?

3 THE WITNESS: Yes, if I understand you correctly, Your  
4 Honor.

5 THE COURT: Well, and what I'm really focused on here is  
6 that there may be someone who has a lower comprehension register  
7 but still nonetheless is able to understand communications that  
8 are delivered in higher register from time to time; is that  
9 correct? It's not a categorical difference?

10 THE WITNESS: Yes, that's always possible. It's just  
11 there were so many factors happening all at the same time that  
12 it's hard to give a categorical answer to that question.

13 THE COURT: Well, and one thought here with regards to  
14 Miranda warnings. If you had someone who had a low  
15 comprehension register but had had multiple interactions with  
16 law enforcement and the criminal justice system, they may be  
17 able to understand Miranda warnings given at a higher register  
18 given that experience. Is that a fair general observation?

19 THE WITNESS: Well, one would think so, but the research  
20 says no, and that was one of the studies that I was citing  
21 earlier. When they took people who had been arrested more than  
22 five times compared to 40 interactions, they found no real  
23 difference and that is a surprising fact.

24 THE COURT: I understand.

25 THE WITNESS: Even the...

1           THE COURT: In the dispute that's now before The Court  
2 there are sort of two sides to the coin. There is Mr.  
3 Perez-Bravo's comprehension register both in terms of the spoken  
4 word and potentially the written word and then on the other side  
5 of the coin is the provision of Miranda rights and the register  
6 at which those are communicated both orally and in writing.

7           In terms of your field of expertise, do you come to any  
8 sort of conclusion about, for example, a percentage likelihood  
9 that someone with Mr. Perez-Bravo's background would understand  
10 the communications at the register that were given here?

11           THE WITNESS: Not really, Your Honor. That's why I  
12 focused my testimony on those two words that I have hard data  
13 on, that one of those words has not been recorded in the speech  
14 of folks like Mr. Perez-Bravo. That would militate against it  
15 being understood because, if you don't have an active knowledge,  
16 it's unlikely you will have a passive knowledge, although it's  
17 possible.

18           Another thing, you were talking about reading, I saw the  
19 other testimony the other day, and while it certainly looks like  
20 that Mr. Perez-Bravo is reading, I've spoken to people who could  
21 not read and they very often, especially because it is  
22 societally bad to be illiterate, would make believe that they  
23 read things and they will stare at paper. They can handle it  
24 and they will put it down and people would think that they had  
25 read it, but I knew very well from testing them that they could

1 not read, that they were totally illiterate. So I have no idea,  
2 if Mr. Perez-Bravo, as acting in the video, was actually reading  
3 or not. I'm just saying the mere fact that he appears to be  
4 should not be categorical evidence that he was.

5 THE COURT: I understand that point, Dr. Leonard.  
6 Regarding those two words that you focused on, I'm going to  
7 endeavor to ask a specific question, but there may be a  
8 vernacular in your field that addresses this better than the  
9 term that I use.

10 It's not uncommon, I think, even in common understanding  
11 of speaking and reading comprehension that if an individual  
12 encounters a word that they are not familiar with or they don't  
13 understand that they may still derive some notion of what it  
14 means by context clues or the circumstances in which they are in  
15 or even surroundings verbiage in the same sentence, and so  
16 focusing on one of the two words that you referenced, the  
17 "proporcionar" word, what, in your expertise, would you expect  
18 someone with Mr. Perez-Bravo's comprehension register to do with  
19 that word if they were to not understand it outright, and by  
20 that I mean, would they simply shut down and not understand  
21 anything around it or fill in with another word that's perhaps a  
22 mistaken definition or try to bridge the gap by looking at other  
23 words in the sentence or other words that were communicated to  
24 them?

25 THE WITNESS: All those things are possible that happen

1 when people read. What is militating against understanding  
2 here, and, again, Your Honor, I don't know what Mr. Perez-Bravo  
3 understood and what he did not understand.

4 All I can do is look at the data and say, "This is  
5 certainly weighing against understanding." He reads Spanish.  
6 This word "proporcionar" p-r-o-p-o-r-c-i-o-n-a-r, could have  
7 derailed the analogy and especially in these long multi-clausal  
8 sentences. If you look at even the English, it's quite long and  
9 it ends with "if you want" and one must put all of the pieces  
10 together to totally understand. Your Honor is hundred percent  
11 correct that that fluent readers ...

12 THE COURT: One moment, Dr. Leonard, I know it's maybe a  
13 bit uncomfortable or awkward, but if you could pick that  
14 microphone back up again. We were getting much better audio  
15 when you did.

16 THE WITNESS: Neither... I'm sorry, Your Honor, I just  
17 forgot.

18 So what fluent readers do is they jump over words that  
19 they do not understand and then perform all of the acts, let's  
20 say, that you were talking about, which is you look at context,  
21 et cetera. You don't want to stop and focus in on a word that  
22 you don't understand.

23 So, for example, in an old case of my mentor, there was  
24 a ransom note and it said, "Leave a certain amount of money in a  
25 diaper bag on the devil strip on the corner of 6th and Main,"

1 and "devil strip" is a term used only in one city, and it means  
2 the strip of grass in between the road and the sidewalk, and I  
3 have used that in presentations hundreds of times, and most  
4 fluent readers jump right over that word "devil strip" because  
5 it's meaningless to them. And I ask, "Do you see anything here  
6 that you don't understand," and they don't see it because they  
7 are fluent readers and they are trying to get everything else  
8 and they got enough information that they are supposed to put  
9 money in the diaper bag, et cetera, so that's what happens.

10 But non-fluent readers and non-fluent listeners get  
11 stuck on words that they don't know, and terrible readers  
12 actually forget what happened in the beginning of a sentence by  
13 the time they get to the end. It's an extremely complex  
14 process, so I don't know exactly what happened here, but I can  
15 point to using these unfamiliar, high formality, high education  
16 words as perhaps militating against understanding.

17 THE COURT: Thank you. That's helpful, Dr. Leonard.  
18 Mr. Howard.

19 THE WITNESS: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. HOWARD:

22 Q. Good afternoon, Dr. Leonard. Can you hear me okay?

23 A. Yes, I can. Thank you.

24 Q. In preparing your report, did you speak with Higinio  
25 Perez-Bravo?

1 A. No.

2 Q. Did you interview his family or his friends?

3 A. Did I speak with his family or friends?

4 Q. The question is did you interview his family or friends?

5 A. No.

6 Q. Did you speak --

7 A. I had no contact with anyone but Mr. Martin.

8 Q. Did you speak with the people that Mr. Perez-Bravo worked  
9 with?

10 A. No. I only had contact with Mr. Martin.

11 Q. Do you know what Higinio Perez-Bravo did for a living?

12 A. What he did for a living?

13 Q. Yes.

14 A. I read the materials.

15 Q. The question is: Do you know what he did for a living?

16 A. He was involved in construction.

17 Q. You describe him as "poorly-educated Perez"; correct?

18 A. I understand that he went to a village school and didn't  
19 get past I believe it was the eighth grade, so that's fairly  
20 poorly because in the studies that I cite they are talking about  
21 very well educated people versus lower economic and less  
22 educated.

23 Q. I appreciate that. My question was: You described him as  
24 "poorly-educated Perez"; correct?

25 A. Yes, I believe so.

1 Q. Do you know how long he had been in the United States?

2 A. Quite a while.

3 Q. Do you know precisely how many years he had been in the  
4 United States?

5 A. No, but I don't think he went to school in the United  
6 States.

7 Q. Do you know how long he had worked in construction in the  
8 United States?

9 A. 20 years, something like that.

10 Q. Did you know that he was also involved in plumbing and  
11 electrical and -- I'm sorry, plumbing and carpentry work as  
12 well?

13 A. I seem to remember that.

14 Q. Do you know about any of his prior interactions with law  
15 enforcement?

16 A. I listened to the testimony the other day and there were  
17 two prior interactions, but I believe they were dealing with  
18 traffic or DUI's.

19 Q. At the time that you wrote your report that's dated  
20 January 15th, 2020, did you know about any of his prior  
21 interactions with law enforcement?

22 A. No.

23 Q. You mentioned on direct the reading level of certain  
24 prisoners. Doctor, what reading level is Mr. Perez-Bravo at?

25 A. I don't know.

1 Q. Are you a native Spanish speaker?

2 A. I would imagine he had an eighth grade education. I'm  
3 sorry.

4 Q. I'm not asking what you imagine. Just the answer.

5 Are you a native Spanish speaker?

6 A. No. Spanish is my second language. I was born into a  
7 Spanish-speaking neighborhood.

8 Q. Have you lived in Mexico?

9 A. No. I visited, though.

10 Q. Have you spent much time with lower economic class Spanish  
11 speakers in Mexico?

12 A. Not in Mexico.

13 Q. You mentioned --

14 A. I ran a bakery in Puerto Rico.

15 Q. You mentioned --

16 A. But then again that's Puerto Rican.

17 MR. MARTIN: Let him finish.

18 Q. (By Mr. Howard) I appreciate that, but my question was  
19 dealing specifically with Spanish speakers in Mexico. Did you  
20 understand my question?

21 A. Yes.

22 Q. You mentioned on direct a 2007 study of British detainees.  
23 Do you recall mentioning that?

24 A. Yes.

25 Q. And you also mentioned various data. Do you recall using

1 the word "data"?

2 A. Yes.

3 Q. And that data and that 2007 study of British detainees,  
4 was that important in forming the opinion for which you  
5 testified today?

6 A. I did not rely on that when I wrote my report, but this is  
7 very generally well understood in the field of linguistics and  
8 especially forensic linguistics when anybody deals with Miranda  
9 rights and comprehension in general. I'm just trying to give  
10 you a complete answer.

11 Q. Indeed, would you agree that nowhere in your report do you  
12 mention that 2007 study of British detainees?

13 A. That's correct.

14 Q. In fact, nowhere in your report do you mention any  
15 statistics or percentages?

16 A. That's correct.

17 Q. Turning back now to the lower economic class Spanish  
18 speakers in Mexico that I asked about, you claim in your report  
19 that the words "tribunal" and "proporcionar" are, according to  
20 you, absent in the oral speech of lower economic class Spanish  
21 speakers in Mexico; is that right?

22 A. No.

23 Q. I would refer your attention to Page 6 of your report.

24 A. I am not saying in my opinion. I'm reporting scientific  
25 studies.

1 Q. Turn to --

2 A. You asked me my opinion. I don't have an opinion on it.

3 I am reporting scientific studies.

4 Q. And yet you do not cite those scientific studies anywhere  
5 in your report; correct?

6 A. I don't recall. I have them in front of me.

7 Q. Take as much time as you need.

8 A. Oh, no, I do. Of course, I did. I read the *Dictionary of*  
9 *the Royal Spanish Academy*, *Panhispanic Spanish Legal Dictionary*,  
10 *A Frequency Dictionary of Spanish*, *CREA Oral Corpus of Spanish*,  
11 *the Corpus of 21st Century Spanish*. Shall I go on?

12 Q. I understand those are the sources you relied upon, but  
13 you mentioned a study, so tell me following that sentence that I  
14 quoted from on Page 6 of what study are you citing there?

15 A. The study that created all of these corpora and  
16 dictionaries.

17 Q. How do you define the term "lower economic class"?

18 A. I don't. I took the scientists who created those studies'  
19 characterization.

20 Q. Well, what do you understand the phrase "lower economic  
21 class" to mean, as you used it?

22 A. People who make relatively less money than other people.

23 Q. Do you know how much money Perez-Bravo was making leading  
24 up to his arrest?

25 A. Are we talking about in the United States or Mexico?

1 Q. I'm asking you: Do you know how much money Perez-Bravo  
2 was making leading up to his arrest?

3 A. And I asked you, are we talking about Mexico or the United  
4 States?

5 Q. I don't understand your question. My question is: How  
6 much money, if you know, was this individual making?

7 A. I don't know.

8 Q. Okay. Do you know how many vehicles he owned?

9 A. I believe there was testimony the other day that he owned  
10 three vehicles.

11 Q. I'm not asking about testimony of others. I'm asking  
12 about your knowledge as you are here testifying and rendering an  
13 opinion, so I will repeat the question.

14 A. My testimony is based on what I heard the other day.

15 THE COURT: Gentlemen, I'm going to ask both of you to  
16 try to avoid speaking over one another. Dr. Leonard, make sure  
17 that the question is complete before you begin answering it.  
18 That is for the benefit of --

19 THE WITNESS: Yes, Your Honor.

20 THE COURT: -- the interpreters and the court reporter.  
21 I know it's challenging with the video connection and the audio  
22 connection but please endeavor to do so.

23 THE WITNESS: Yes, Your Honor.

24 Q. (By Mr. Howard) Doctor, is it fair to say your  
25 understanding of how many vehicles he owned is entirely

1 dependent on the testimony you've heard elsewhere?

2 A. Yes. That's what I was trying to say.

3 Q. Would you agree that speech patterns can differ based on  
4 various regions within a country?

5 A. Yes.

6 Q. And indeed in the United States, there's different  
7 regional dialects; correct?

8 A. Of course.

9 Q. And are you familiar with the different dialects and  
10 regional differences in the manner of speech in Mexico?

11 A. Could you repeat that?

12 Q. I'm sorry?

13 A. Would you repeat that?

14 Q. Yes, absolutely. Are you familiar with the different  
15 dialects and regional differences in the manner of speech in  
16 Mexico?

17 A. Only in the most general terms.

18 Q. Do you know where in Mexico Perez-Bravo is from?

19 A. Yes, I think Chiapas.

20 Q. When was the last time you were in Chiapas?

21 A. A couple of years ago.

22 Q. How many times have you visited Chiapas?

23 A. Actually I might not have been to Chiapas a couple of  
24 years ago. Obviously I don't set myself up as an expert in the  
25 dialect of Chiapas. That's why I rely on sources who are.

1 Q. The question was: When was the last time you were in  
2 Chiapas?

3 A. I don't recall if I was ever there, come to think of it.

4 Q. How many lower income people from Chiapas have you  
5 studied?

6 A. Personally none.

7 Q. Would you agree that speech patterns can differ between  
8 Spanish speakers in Mexico and Spanish speakers in the United  
9 States?

10 A. From Mexico to Spanish speakers in the United States who  
11 are from Mexico? What do you mean?

12 Q. Well, the question was: Would you agree that speech  
13 patterns can differ between Spanish speakers in Mexico and  
14 Spanish speakers in the United States?

15 A. Right, and I heard the question and I was asking what it  
16 meant so I could fully answer it.

17 Q. Imagine there are Spanish speakers in Mexico. Is that  
18 fair to imagine?

19 A. Yes.

20 Q. And there are Spanish speakers in the United States;  
21 correct?

22 A. And some are from Mexico, and are we talking about them or  
23 just some general undifferentiated Spanish speakers?

24 Q. How about we imagine somebody who has lived in the United  
25 States for two decades and speaks Spanish?

1 A. Okay.

2 Q. And I want you to imagine somebody who has lived in Mexico  
3 their entire life and speaks Spanish, okay?

4 A. Okay.

5 Q. Would you agree that speech patterns will differ in the  
6 Spanish language between speakers in Mexico and Spanish speakers  
7 in the United States?

8 A. Yes, of course. It's very important what groups you stay  
9 with. If you all of a sudden live with Puerto Ricans, the  
10 Spanish is going to change far more than if you stay only with  
11 people from your home area of Mexico, for example.

12 Q. You understand that Perez-Bravo was in the United States  
13 for 20 years before his interview with law enforcement?

14 A. Correct.

15 Q. And even though he's been in the United States for two  
16 decades, your report refers to Spanish speakers in Mexico, not  
17 Spanish speakers in the United States; correct?

18 A. Yes.

19 Q. And you would agree that it's likely that someone is going  
20 to learn some new words spending 20 years in the United States;  
21 correct?

22 A. Like "proporcionar"?

23 Q. I didn't ask about "proporcionar." My question is whether  
24 would agree that it's likely that someone who spends 20 years in  
25 the United States is likely to learn some new words in those 20

1     years; correct?

2     A.     Absolutely.

3     Q.     How old is Higinio Perez-Bravo?

4     A.     I don't recall, about 40 or 50.

5     Q.     Wouldn't you think it relevant to know his age since  
6     you're opining on whether he understood something?

7     A.     Say that again. I couldn't hear you, sorry.

8     Q.     Wouldn't you think it's relevant to know his age since  
9     you're opining on whether he understood something?

10    A.     The difference between 40 and 50 isn't going to make much  
11    of a difference. If he were ten, it would make a big  
12    difference, but 40 or 50 I don't think is going to make much  
13    difference, in my opinion.

14    Q.     But indeed, you don't know his age; correct?

15    A.     I did at one point. I don't recall.

16    Q.     The word "tribunal" is a synonym of "corte"; correct?

17    A.     In Spanish, yes.

18    Q.     You claim that you've been employed by the FBI to work on  
19    specific cases and train their agents; right?

20    A.     I claim that?

21    Q.     Well, is that true?

22    A.     I state that, yes.

23    Q.     And you trained them on assessing and analyzing  
24    communications; correct?

25    A.     Yes.

1 Q. Would it surprise you then that the FBI's Spanish Miranda  
2 advisement form uses the word "tribunal" and not "corte"?

3 A. No, it wouldn't surprise me at all. I don't train the --  
4 the translators and the interpreters.

5 Q. And indeed, have you reviewed the FBI's Spanish Miranda  
6 advisement form?

7 A. Not recently.

8 Q. Have you ever?

9 A. I've never had a case with it.

10 Q. Staying on --

11 A. I'm sorry, I spoke over you again.

12 Q. It's okay. Just to be clear, your testimony was you never  
13 had a case with it; correct?

14 A. I never had a case that I can remember that used the FBI's  
15 Miranda warnings.

16 Q. Staying on Page 6 of your report, you recognize that the  
17 word "proporcionar" is, according to you, a very frequent term  
18 in written materials; correct?

19 A. Yes.

20 Q. Do you know what written materials Perez-Bravo read?

21 A. No.

22 Q. Which television shows he watched?

23 A. I couldn't hear the end of that.

24 Q. Do you know which television shows that he watched?

25 A. No.

1 Q. You opine that there are better understood alternatives to  
2 "proporcionar"; is that right?

3 A. Correct.

4 Q. And you mention "ofrecer" and "facilitar"; is that right?

5 A. Yes.

6 Q. And "facilitar" means "to facilitate"; isn't that correct?

7 A. No, it means "facilitar."

8 Q. The translation of "facilitar" --

9 A. It --

10 Q. -- is roughly "to facilitate"; correct?

11 A. It's a cognate of it, but just to be clear, I offered  
12 those simply as examples. I'm not saying that that's what the  
13 Miranda should contains. If I were tasked with redoing the  
14 Miranda, we would have to redo it from the ground up.

15 But these are specific examples.

16 Q. And those examples are the ones that I'm asking you about.  
17 Isn't it true that you testified on direct that the word  
18 "facilitar" translates to "facilitate"?

19 A. It's the cognate of it. It's hard to know -- it doesn't  
20 particularly a hundred percent match "facilitate."

21 Q. What's the translation of "facilitar"?

22 A. It's close to "facilitate" but you can -- translation is a  
23 very difficult thing, as our interpreters know. I was the court  
24 interpreter for the State of New Jersey criminal system, and  
25 interpretation is very, very difficult. There is no one-to-one

1 translation from language to another language.

2 Q. So you think it would be more understandable to tell  
3 someone that "If you cannot afford an attorney one will be  
4 facilitated for you" rather than "one will be provided for you";  
5 is that right?

6 A. Well, no. As I keep saying, "facilitate" is, of course, a  
7 higher register word in English than a lot of other words, and I  
8 think that may be what you're getting at, and again, if I were  
9 going to redo the Spanish Miranda, I would redo it from the  
10 ground up.

11 Q. You claim that the rights given to Perez-Bravo do not  
12 imply the free nature of the offer of an attorney; is that  
13 right?

14 A. Well, the officer says, "If you cannot afford an  
15 attorney," but I don't think they get to the end of that. The  
16 words themselves, "proporcionar" don't -- do not entail that is  
17 what I actually wrote in my report, if I remember correctly.

18 Q. Well, Page 6 of the report, you used the words which I  
19 just questioned you on, which is "the free nature of the offer."  
20 Do you see that?

21 A. No. Hold on, please. Page 6?

22 Q. Yes.

23 A. And where are you starting? You were directing me to  
24 something on Page 6?

25 Q. "The free nature of the offer."

1 A. Yes, neither of this implies the free nature of the offer,  
2 the cost of...

3 Q. You would agree that when discussing that offer of an  
4 attorney it's preceded by a condition; correct?

5 A. Yes.

6 Q. That condition being that "if you cannot afford an  
7 attorney"; is that right?

8 A. Yes.

9 Q. And you don't have any complaint, from a linguistic view,  
10 of initial clause of that sentence where it says so "no puede  
11 pagar un abogado"; right?

12 A. Yes, but, of course, that's an if/then clause, and the  
13 "then" is a very important part of it. And if the "then" is not  
14 understood correctly, then "if you cannot afford an attorney"  
15 what? It could be a universe of choices.

16 Q. You're aware that Mr. Perez-Bravo did not express any  
17 confusion in his interview about the words "tribunal" or  
18 "proporcionar"; right?

19 A. When they asked if he understood, he said yes.

20 Q. And indeed he said yes multiple times, didn't he?

21 A. He said -- definitely did.

22 Q. You write at the top of Page 7 of your report that, quote,  
23 there is no indication that Perez understood the content or the  
24 purpose of the Miranda rights. Do you see that?

25 A. No.

1 Q. It's the very first sentence at the very top paragraph on  
2 Page 7.

3 A. I believe you. I'm looking for the sheet of paper. I  
4 can't find the paper, but I certainly believe that everything  
5 you're reading is correct.

6 Q. You have no reason to doubt that; correct? Can you hear  
7 me?

8 A. I can hear you.  
9 Say what you were saying again.

10 Q. I will repeat the quote from the first sentence.

11 A. Okay.

12 Q. In the first paragraph on Page 7, where you write, "There  
13 is no indication that Perez understood the content or the  
14 purpose of the Miranda rights" -- do you recall writing that?

15 A. Yes.

16 Q. And do you stand by the fact that there is no indication  
17 that he understood the content of those Miranda rights?

18 A. Other than him saying yes, that's correct. He certainly  
19 did not explain it. He was not quizzed on it. He did not  
20 explain it himself.

21 Q. Well, you testified on direct --

22 A. And there were words used -- I'm sorry. I wasn't  
23 finished.

24 Q. Go ahead.

25 A. Certainly. I paused too long.

1           And as I have testified, there are words in there that do  
2           not belong to the register that he would have spoken growing up  
3           in Mexico and later presumably.

4           Q.     You testified on direct that he understood his right to  
5           remain silent; correct?

6           A.     He seems to have, but it's the whole -- the whole concept  
7           of Miranda that is -- it's all the pieces should fit together,  
8           and I testified the fact that he thought he was going to go home  
9           if he cooperated and spoke to the officers, and also his comment  
10          that he was not offended belies a true understanding of what it  
11          means to remain silent and not remain silent.

12          He understood that if he wanted to, he could stop  
13          speaking, but all these other things were going to happen. He  
14          was going to be put back in jail, and that obviously -- there  
15          was no evidence that he understood where that fit into the  
16          entirety of the Miranda warning.

17          Q.     So going back to my question about you writing that there  
18          is no indication that he understood the content of his Miranda  
19          rights, again, you would agree that he understood his right to  
20          remain silent?

21          A.     Correct.

22          Q.     And that when asked repeatedly if he understood his rights  
23          he said yes; correct?

24          A.     Correct.

25          Q.     And I'm not a linguistics expert, so I'll ask you: When

1 he orally confirms time after time that he understood his rights  
2 that were read to him from that Miranda waiver, that's an  
3 indication, isn't it, that he understood the content of his  
4 Miranda rights?

5 A. Well, as I testified at great length, apparently it is  
6 not.

7 Q. Is this one of those instances that you describe in which  
8 people may think they understand but in reality they do not?

9 A. It's possible. I don't know what Mr. Perez-Bravo  
10 understood. I can only go by what I see there on the page and  
11 in the video and the reaction.

12 MR. HOWARD: I have no further questions for this  
13 witness, Your Honor.

14 THE WITNESS: I'm sorry, what was that?

15 THE COURT: Dr. Leonard, Mr. Howard has concluded his  
16 questions. Mr. Martin, I believe, has some redirect for you at  
17 this time.

18 REDIRECT EXAMINATION

19 BY MR. MARTIN:

20 Q. Mr. Howard asked you a number of questions about what you  
21 knew about Mr. Perez-Bravo. You had an opportunity to review  
22 his entire transcript of his interview, did you not?

23 A. The question is did I have the opportunity to review the  
24 entire transcript and video?

25 Q. Yes, sir.

1 A. Yes, I did.

2 Q. And in there, it describes a lot of his background, does  
3 it not?

4 A. Yes.

5 Q. He asked you whether or not you had --

6 A. I said --

7 Q. Go ahead.

8 A. -- that I was aware of it when I was writing my report,  
9 but now it's quite a while later.

10 Q. When you wrote your report, that was not the sum of all  
11 the knowledge that you have about this case that you have  
12 today; correct?

13 A. I'm sorry, I didn't understand that.

14 Q. Well, when you wrote your report back a long time ago -- I  
15 forget exactly when -- that was a summary of your investigation  
16 and conclusions, but it did not mean your investigation and  
17 research in this area stopped then, did it?

18 A. Yes, that's correct.

19 Q. So you've continued to look and work with me about your  
20 conclusions regarding this case; correct?

21 A. Yes, and I tried hard to explain many more concepts and  
22 principles to you so that we would have as clear an  
23 understanding as possible.

24 Q. Counsel asked you about the fact that Mr. Perez-Bravo has  
25 some experience with plumbing and carpentry work. Does that

1 mean that he can understand the type of questions or  
2 sophisticated questions involved in Miranda rights in this case?

3 A. No. For example, it doesn't mean that he can necessarily  
4 speak English even though that's the dominant language in the  
5 United States. I actually couldn't figure out what the import  
6 in terms of his understanding formal Spanish was that he owned  
7 three cars either.

8 Q. Mr. Howard asked you about whether or not Mr. Perez-Bravo  
9 expressed any confusion about his rights. Would you expect him  
10 necessarily to have expressed that or would he -- explain what  
11 your answer would be regarding that.

12 A. People routinely overagree and also there's a place where  
13 it seems that Mr. Perez-Bravo, who is waiting for his turn -- I  
14 think everybody who has ever studied conversation analysis and  
15 has had a conversation knows that very often people are just  
16 waiting for you to stop talking so they can say what they want  
17 to, and Mr. Perez-Bravo was very interested in getting the  
18 answers to his questions, and that again, as I was trying to  
19 explain in my cross, it's the entirety of the understanding of  
20 the pitfalls, and do they truly understand what rights people  
21 are waiving, and if they say yes, that's hardly an indication.

22 Q. Now, in the report you mentioned, Mr. Howard asked you  
23 about, you know, whether he understood all of his Miranda  
24 rights. He understood some of them, did he not?

25 A. I didn't hear that well, I'm sorry. Can you repeat?

1 Q. Well, there is a sentence taken out of context --

2 THE COURT: Mr. Martin, make sure you stay at the  
3 microphone.

4 MR. MARTIN: Yes, sir, I forgot.

5 Q. (By Mr. Martin) He asked you about a particular sentence  
6 in your report. "There is no indication" -- I will read it to  
7 you. "There is no indication that Mr. Perez understood the  
8 content or purpose of the Miranda rights." Let me ask you this.  
9 You understood and I think you answered that he understood he  
10 had a right to silence, to stop talking?

11 A. Yes.

12 Q. But the key to this case is whether or not he understood  
13 that if he had the right to an attorney at no cost to assist  
14 him; is that correct?

15 A. That's correct, and especially even during that  
16 interrogation.

17 Q. Not necessarily at court or any time else, but during the  
18 interrogation; correct?

19 A. That's right.

20 Q. That's the crux of your opinion; correct?

21 A. Yes. That's another problem that we find with  
22 translations of Miranda into other languages. For example, in  
23 Vietnamese law, one does not typically have an attorney until  
24 one is actually in court, and it's very hard for mono-language  
25 Vietnamese immigrants to understand that apparently, that they

1 can have an attorney right then because it just doesn't make  
2 sense to them. There's so much involved in communicative  
3 competence, not merely the words. The interpreters understand  
4 this very, very well.

5 Q. The Court asked you some questions about the register,  
6 whether it's a continuum or whether there's certain markers.

7 Based on everything that you know about Mr. Perez-Bravo  
8 from the reports that you -- the information you had, the  
9 information that Dr. Flores had, the -- all the information that  
10 you've collected over the time in this matter, is there any  
11 doubt in your mind that he is of a low register in the Mexican  
12 community?

13 A. He certainly is not of the ability, from my understanding,  
14 and high formality, high education...

15 THE COURT: Dr. Leonard, would you repeat that answer,  
16 please? It was difficult to hear you.

17 THE WITNESS: Sorry, one second.

18 Q. (By Mr. Martin) Hold your microphone up.

19 A. Could you ask the question again, Mr. Martin?

20 Q. Well, I was asking you basically about we mentioned The  
21 Court asked you some questions about the register and whether  
22 Mr. Perez-Bravo is in the low register, from what you  
23 understand, based upon everything you know about this case  
24 including what you had in the transcript and other information  
25 that's collected over the years including Dr. Flores' report and

1 so forth. Is there any doubt in your mind that he generally  
2 fits into the lower classification register among Mexican  
3 speakers?

4 A. Yes.

5 Q. Also counsel asked you some questions about your language  
6 ability. You are fluent in Spanish but you've never lived in  
7 Mexico; correct?

8 A. Yes, and I'm not even sure I'm still fluent in Spanish,  
9 but I ran a business in Puerto Rico totally in Spanish, and I  
10 was born into a Spanish-speaking neighborhood in Brooklyn.

11 Q. But you consulted with other people who are specialists in  
12 the Spanish language, especially the Spanish language in Mexico;  
13 correct?

14 A. Precisely. We don't rely on our intuition in any event.  
15 We go to the data and we -- I didn't think we had to ask someone  
16 "What is your opinion of this word?" There are very, very well  
17 researched professional studies by professional lexicographers,  
18 professional corpus linguists, professional sociolinguists and  
19 sociologists that study exactly what kind of language is used by  
20 all sorts of different demographics in Mexico and other  
21 countries, too. That's what I relied on.

22 Q. And as a scientist involved with forensic linguistics,  
23 that is something that regularly scientists do, consult with  
24 others in trying to understand a problem; correct?

25 A. Absolutely.

1 MR. MARTIN: Just a second.

2 THE WITNESS: That's how science works.

3 Q. (By Mr. Martin) I may not have asked my question  
4 correctly. Is there any doubt in your mind that Mr.  
5 Perez-Bravo fits into the lower register with regards to  
6 Spanish speakers from Mexico?

7 A. All indication of all demographics he does, yes.

8 MR. MARTIN: Yes. Correct. Thank you. That's all I  
9 have, Your Honor.

10 THE COURT: Thank you, Mr. Martin. Mr. Martin, do you  
11 have any other witnesses?

12 MR. MARTIN: No, sir.

13 THE COURT: Any other evidence?

14 MR. MARTIN: No, sir.

15 THE COURT: Ms. Groover, Mr. Howard, anything else with  
16 relation to the motion regarding admissibility of the  
17 statements.

18 MS. GROOVER: No additional evidence, Your Honor, just  
19 argument at the appropriate time. There is a correction,  
20 though, we would like to make. I've spoken with defense counsel  
21 about this and would like to bring this to The Court's  
22 attention.

23 Specifically, during Agent Miranda's testimony,  
24 something that he brought to our attention to correct, during  
25 the direct examination, they were referring to a document. It

1 was referred to as a state warrant by questioning for him to  
2 review if the information was accurate and direct The Court's  
3 attention, this portion of interview is documented at the bottom  
4 of Page 9 of --

5 INTERPRETER DAVIS: I'm sorry, the interpreter can't  
6 keep up.

7 MS. GROOVER: Sorry about that. This discussion is  
8 documented on Page 9 of the transcript, which is Government's  
9 Exhibit 2, and at the approximate mark of 41 minutes and 8  
10 seconds into Exhibit 1 of the audio.

11 After his testimony, he wanted to ensure that the record  
12 was correct. He was not referring to the state arrest warrant  
13 but rather it was a booking form with biological information to  
14 review.

15 I discussed this with defense counsel and agree that for  
16 today's purposes it's not material and no need to recall the  
17 witness to correct and clarify the statement, but I wanted to  
18 make sure The Court was aware, correct the record and also let  
19 Your Honor know that Special Agent Miranda is present if you  
20 would like him to testify to clarify that issue.

21 THE COURT: All right, I have a copy of that transcript  
22 here in front of me. Let me make sure that I fully understand  
23 the correction. There is a portion of the English language  
24 translation of the transcript where it appears that Agent Snipes  
25 is saying, "Show him the (unintelligible) arrest, make sure it's

1 all the same," and then Agent Miranda says, "It's all that --  
2 it's the same, question mark, this information, question mark,"  
3 that is the document that you're referencing?

4 MS. GROOVER: That is correct, Your Honor.

5 THE COURT: And that is not an arrest warrant but rather  
6 an information sheet related to Mr. Perez-Bravo; correct?

7 MS. GROOVER: That is correct.

8 THE COURT: Mr. Martin, any disagreement with any of  
9 that?

10 MR. MARTIN: No, that's correct.

11 THE COURT: Well, regarding argument -- and let me be  
12 clear, Dr. Leonard, you are now excused. You are welcome to  
13 drop off of the videoconference at this time.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Thank you.

16 Regarding argument, I will note that this motion is  
17 fully briefed and supported by ample legal citations. I will  
18 take argument at this time, though, but I just encourage you to  
19 understand I've read the briefs. I'm very familiar with them.  
20 There's no need to sort of reiterate all the points that are  
21 laid out in the briefs but I certainly welcome any arguments  
22 you'd like to make on these motions.

23 MR. MARTIN: Your Honor, I don't know, when we talked  
24 about argument, I would actually request that The Court allow us  
25 to brief this. There is a lengthy -- a transcript. I've talked

1 to the court reporter briefly. She says she thinks she could  
2 get us a transcript together, depending on grandchildren  
3 problems, by the end or middle of next week.

4 I would prefer -- and I think it would be helpful to The  
5 Court and to me -- to be able to have a transcript and to be  
6 able to cite for The Court specific references from the  
7 transcript in a post-hearing brief instead of trying to go --  
8 slide through all this this morning. That's what I would  
9 prefer.

10 THE COURT: Ms. Groover, do you care to comment on that?

11 MS. GROOVER: I don't believe supplemental briefing is  
12 necessary, Your Honor. I do believe it's been fully briefed.  
13 We've had a day and a half now testimony on that that you're  
14 familiar with. We're prepared to go forward with an argument,  
15 Your Honor.

16 THE COURT: Well, I'm going to grant the request for an  
17 opportunity to submit supplemental briefing. We are here and  
18 convened. I'm not going to conduct another in-person hearing  
19 for taking any additional oral argument but I will give defense  
20 counsel an opportunity to submit a supplemental brief once a  
21 transcript is available of all the evidentiary presentations,  
22 and counsel for the Government will also have an opportunity,  
23 not required to, but you're welcome to submit a supplemental  
24 brief responding to the supplemental brief of defense counsel.

25 I will set a schedule for that briefing based on the --

1 once the transcript is made available setting out the deadlines  
2 and the length of any supplemental briefs on these topics, Mr.  
3 Martin.

4 MR. MARTIN: That's correct, Your Honor, and I would  
5 think that -- I'm not asking for oral argument at a later time.  
6 I just want to rely on briefs.

7 THE COURT: That will be fine. I don't want to  
8 foreclose the opportunity for oral argument, though. Ms.  
9 Groover, Mr. Howard, do you care to present any oral argument  
10 today?

11 MS. GROOVER: No, Your Honor.

12 THE COURT: Before we move on entirely, I will note that  
13 there are two sets of motions here that are somewhat  
14 interrelated. There is a set of motions for a hearing regarding  
15 the admissibility of the custodial statement. Those are  
16 identified as Document Numbers 328 and 403 and then all the  
17 associated briefing with those two motions.

18 There's a separate motion that defendants have filed  
19 related to a motion to exclude confession or sever. That is  
20 Document Number 355, which also relates to the same Perez-Bravo  
21 statement.

22 While I've not reached any conclusions on that first set  
23 of motions, I do have one question for the Government with  
24 relation to the second motion, and that specifically is that the  
25 Government has argued that the statement from Mr. Perez-Bravo,

1 the transcript that we've referenced numerous times, can be  
2 utilized at trial without causing any sort of Brewton issues  
3 with sufficient redactions and limiting instructions.

4 My question or questions is first: Does the Government  
5 intend to utilize the video and audio portion of that statement,  
6 and, if so, how do you address any redaction or limiting  
7 instructions with regard to audio or video and then, second, if  
8 the answer is -- regardless of the answer to that question -- if  
9 you intend to use the written transcript, is the Government  
10 prepared to submit a proposed sometimes referred to as a Brewton  
11 statement that provides all those redactions so The Court can  
12 assess the appropriateness of that?

13 MR. HOWARD: Your Honor, I certainly don't want to rule  
14 out our ability to use the video and the audio. I think the  
15 solution to that would be we can modify the audio to either have  
16 a beep or some other -- you know, you can certainly edit an  
17 video in a way that the words and the identifiers of individuals  
18 do not come out. Is it optimal? No, but I think it is feasible  
19 and workable, and again you pair that with a limiting  
20 instruction, I think it would be appropriate.

21 Going to the second question of whether we can submit  
22 something that has the redactions, has the gender neutral  
23 pronouns, we're happy to send that to The Court. We will  
24 certainly send a copy. We will file that as a sort of proposal  
25 to see if that can be run up the flag pole to see if it flies.

1           THE COURT: Well, none of this presupposes a ruling on  
2     the admissibility of the statement generally, but in order for  
3     The Court to fully assess the Government's response with regard  
4     to that second set of motions, I'm going to require submission  
5     of that.

6           I will issue a written order setting out the schedule  
7     for the submission of that Brewton statement for consideration.  
8     To the extent that you need to provide any additional statement  
9     regarding audio and video, you can provide that in the briefing  
10    associated with that statement that's provided there.

11          All right, Mr. Howard?

12          MR. HOWARD: Yes.

13          THE COURT: Well, that should conclude everything  
14    related to the custodial statements and the motion to exclude or  
15    sever, although, Mr. Martin, counsel for the defendants, I  
16    addressed those questions to the Government. It is based solely  
17    on their responsive briefing.

18          However, I believe that you-all declined to present any  
19    additional oral argument on those issues. You can certainly  
20    address that motion in your supplemental brief as well, but let  
21    me make that I don't foreclose your opportunity today to present  
22    any additional oral argument on that Document 355. Mr. Martin?

23          MR. MARTIN: Well, Your Honor, it's difficult for us to  
24    give any oral argument because we don't know exactly what the  
25    redactions are. I will suggest it is problem if the redactions

1 sort of make my client sort of appear to be not being  
2 forthcoming and, you know, sort of hedging or something because  
3 I think he was forthcoming during that, and that's something the  
4 jury should understand, but that's just a concern because we  
5 don't know what their redaction are and how they are going to do  
6 it, but that's a concern.

7 THE COURT: I understand the point, Mr. Martin. That's  
8 precisely the benefit of seeing that statement ahead of time is  
9 if there's a challenge you can raise that challenge. Mr. Ertel,  
10 it looked like you were going to --

11 MR. ERTEL: I was going to say basically the same thing.  
12 I think that's the appropriate process. I think I said that,  
13 that if they want to redact, we want to see the redaction and we  
14 will go from there as long as we have an opportunity to reply to  
15 their proposed redactions and respond.

16 THE COURT: Let me be clear, I'm going to impose a  
17 pretty tight schedule on these issues, one that provides  
18 everyone an opportunity to address them, but it will be a  
19 protracted schedule but it will be set forth in a written order.  
20 Let me confirm, I believe we still have Mr. Olive, although his  
21 camera may be turned off, but Mr. Asinc, anything that you would  
22 you care to add?

23 MR. ASINC: No, Your Honor. It's obvious that I can't  
24 comment or argue on something I haven't seen from the Government  
25 yet. If I could, I would be a rich man in the stock market.

1 THE COURT: All right.

2 MR. OLIVE: Your Honor --

3 THE COURT: I believe that may be Mr. Olive. Mr. Olive,  
4 we do not have video from you. It looks like that might be  
5 turned off, but we can hear you. Did you care to add anything?

6 MR. OLIVE: No, but I don't understand the video issue.  
7 Nothing is checked to turn it off.

8 THE COURT: Well, you can continue to try to resolve  
9 that, but we do have good audio with you. We have Mr. Asinc  
10 here and I believe that there is nothing that you care to add  
11 with relation to those motions so we will move on.

12 That leaves the issue of the Franks motion, and I have  
13 scheduled this for oral argument and evidentiary hearing. I  
14 understand the Government has one witness that they would like  
15 to present, Detective Rodriguez; is that correct?

16 MS. GROOVER: That is correct, Your Honor.

17 THE COURT: And you-all have oral argument as well you  
18 would like to make?

19 MS. GROOVER: Yes, Your Honor, briefly.

20 THE COURT: Mr. Martin, you served as the lead advocate  
21 for the defendants.

22 MR. MARTIN: I'm finished for the day. I think Mr.  
23 Ertel is going to --

24 THE COURT: Mr. Ertel will address those.

25 Mr. Ertel, do you have any witnesses or evidence you

1 intend to present?

2 MR. ERTEL: I have I think exhibits as we submitted to  
3 The Court that will probably come in through the  
4 cross-examination of Detective Rodriguez. I don't think there  
5 are any issues. As a matter of fact, I think they are  
6 duplicates.

7 THE COURT: Well, I'm going to go ahead and take a  
8 recess for lunch at this time. I will ask everyone to be back  
9 here in one hour and we will begin with the Government's  
10 presentation at that time on the remaining motion, that is,  
11 specifically the Franks motion that was filed by defendants.  
12 That's Document Number 356. I will just ask everyone to make  
13 sure that you are here at 1:45 ready to go. All right.

14 We will be in recess.

15 (Recess from 12:43 p.m. to 1:47 p.m.)

16 THE COURT: Ms. Groover, Mr. Howard, ready with your  
17 witness?

18 MS. GROOVER: Yes, we are, Your Honor.

19 For the purposes of the record, I know that you have  
20 scheduled this for an evidentiary hearing. The Government does  
21 maintain that Defense has not met their burden, but we are  
22 prepared to proceed with the witnesses. The Government calls  
23 Rodriguez Roberto to the stand.

24

25

1 SERGEANT ROBERTO RODRIGUEZ,  
2 having been first duly sworn, was examined and testified as  
3 follows:

4 THE CLERK: Thank you. You may be seated. Please state  
5 your full name and spell your last name for the record.

6 THE WITNESS: Roberto Rodriguez, last name is  
7 R-o-d-r-i-g-u-e-z.

8 DIRECT EXAMINATION

9 BY MS. GROOVER:

10 Q. Are you employed, sir?

11 A. Yes, ma'am, I am.

12 Q. Where do you work?

13 A. I work for the City of Garden City.

14 Q. What are your duties, sir?

15 A. Currently the sergeant, supervisor of the criminal  
16 investigations division.

17 Q. As a sergeant, what does it mean to supervise the criminal  
18 investigations division?

19 A. To supervise means I oversee the other detectives, assign  
20 cases, proofread reports, proofread search warrants, arrest  
21 warrants, and just make sure everybody is doing their job  
22 thoroughly.

23 Q. How long have you been a sergeant, sir?

24 A. I've been a sergeant for about six months, but I was  
25 supervising as a corporal for three years prior.

1 Q. And prior to that what were you doing, sir?

2 A. Before that I was a detective with the detective division.

3 Q. And how long were you a detective with Garden City?

4 A. I've been a detective since 2013.

5 Q. And when did you begin your career with Garden City?

6 A. The City hired me in 2009. I officially became a sworn  
7 police officer in 2010.

8 Q. I want to take you back to August of 2017. You were a  
9 detective in the investigations division at that time?

10 A. I was, yes, ma'am.

11 Q. And did you have any other duties at that time?

12 A. At that time, no. I was strictly a -- I guess I would  
13 have been one of the senior detectives but I was strictly a  
14 detective.

15 Q. Did you also have any responsibility with respect to crime  
16 scene investigations?

17 A. I was a -- at that time, I was, I believe, one of two  
18 certified crime scene technicians with the City.

19 Q. And what does that mean, to be a crime scene technician?

20 THE COURT: Ms. Groover, Detective Rodriguez, speak a  
21 little bit slower for the translator.

22 MS. GROOVER: Thank you for the reminder, Your Honor.

23 Q. (By Mr. Howard) What does it mean to be a crime scene  
24 technician, sir?

25 A. I process, thoroughly process, all crime scenes. That

1 includes collection of evidence, packaging of evidence, blood  
2 stain reenactment as well all other -- anything associated with  
3 the crime scene.

4 Q. What was your typical schedule like back in August of  
5 2017?

6 A. As it is now, typically work from 8:00 to 4:00, Monday  
7 through Friday unless you're on call or major incident occurs.

8 Q. And what happens if you are on call or a major incident  
9 occurs?

10 A. At that time, we have a primary investigator, a secondary  
11 investigator. Primary investigator, their role would be to get  
12 called out, assess the situation. The secondary would be as an  
13 as-needed basis depending on the severity of the incident, the  
14 number, the size of the crime scene, witnesses that need to be  
15 interviewed. It all depends.

16 Q. Okay. Do you recall August the 18th of 2017?

17 A. I do, yes, ma'am.

18 Q. Was that a Friday?

19 A. It was a Friday.

20 Q. And prior to today, did you have an opportunity to go  
21 back, review your notes, your time cards, your e-mails, your  
22 messages to kind of recreate your schedule?

23 A. Yes, ma'am.

24 Q. And so tell us, walk us through your day on August the  
25 18th of 2017.

1 A. August the 18th I worked between 8:00 and 4:00. I went  
2 home, spent some time with my -- with my children and my  
3 fiancée. And then I got an unexpected phone call about 8:10  
4 that evening.

5 Q. What time did you wake up on August the 18th of 2017?

6 A. About 6:30.

7 Q. Was that normal time for you to wake up?

8 A. Get the kids ready for school, breakfast, yes, ma'am.

9 Q. And get to work by eight o'clock?

10 A. Yes, ma'am.

11 Q. And you worked your regular shift, went home about four  
12 o'clock or so?

13 A. Four o'clockish, yes, ma'am.

14 Q. Did you have dinner that night?

15 A. I did, yes, ma'am.

16 Q. And what happened when you got a phone call about eight  
17 o'clock at night, sir?

18 A. About eight o'clock that evening, I got a phone call from  
19 my newest detective. That was at that time Detective Reyes. He  
20 advised he was on scene of a shooting investigation, and he  
21 didn't think that his outcome was going -- he was going to make  
22 it. He thought it was going to possibly turn into a homicide  
23 investigation.

24 At the time, I believe I was the only certified homicide  
25 investigator, and I was the secondary on-call detective, so he

1 called me for two reasons, one, crime scene and, two, was to  
2 walk him through the steps of a homicide investigation.

3 Q. And this shooting was separate from the shooting involving  
4 Mr. Montoya that we are all here today on; is that correct?

5 A. Yes, ma'am.

6 Q. So what did you do when you got the phone call?

7 A. Told my wife I had to go to work. She was not happy.  
8 Went anyways. It took me 15, 20, 25 minutes to get to the  
9 actual crime scene itself. When I got to the crime scene, at  
10 that time, we were still investigating merely a shooting and  
11 aggravated assault as at that time that decedent was still  
12 alive.

13 So we continued processing as we typically would any  
14 shooting investigation, canvassed the area, processed the crime  
15 scene which at that time we had -- when I arrived on scene, we  
16 had two separate crime scenes. We had the scene where the  
17 decedent had lied and we had the crime scene where the shell  
18 casings and it appeared that the shooting occurred. Again, I  
19 was the crime scene technician at the time so I had to process  
20 that scene.

21 Q. Two separate --

22 A. Two separate scenes. I also had a very good rapport with  
23 the community at the time, so people were coming to me,  
24 providing me information and giving me witness statements as to  
25 what actually transpired with the shooting.

1           It wasn't until about an hour, an hour and a half of being  
2   on scene -- we had medical team working on him -- that we  
3   received information that he had passed, and it turned into a  
4   homicide investigation.

5   Q.    Approximately what time at night was this when it became a  
6   homicide on August the 18th, 2018?

7   A.    Best rough guess, it was about nine o'clock that evening.

8   Q.    Did you go home?

9   A.    No.

10   Q.   What do you do, sir?

11   A.    So just like you see on TV, the first 48 hours you've got  
12   to gather all leads you can within the first amount of time  
13   possible, so the first thing we did was we tried to get in  
14   contact with next of kin, after processing the crime scene, of  
15   course.

16           We determined that the vehicle that he was driving was  
17   stolen so we had to apply for a search warrant to get into the  
18   vehicle to seize any items of evidentiary value inside that  
19   vehicle.

20   Q.    I'm sorry. I do it, too. We will have to remind each  
21   other to slow down.

22   A.    So we went, after we finished processing the crime scene,  
23   we went back to our office, best guess about midnight. And we  
24   began typing search warrant and getting a game plan together as  
25   to what we're going to do for the next couple of hours.

1 Q. Did you have a judge that was on call for you?

2 A. At that time we had Judge Tom Edenfield. He has since  
3 passed, but he was the judge in Garden City.

4 Q. And how many search warrants were you working on at around  
5 midnight so this would have been the next morning?

6 A. Correct. We were trying to get search warrants for the  
7 vehicle, search warrants for the -- he had a personal interest  
8 at the time, which would have been his girlfriend. We  
9 interviewed her and we applied for a search warrant for her  
10 telephone as well, and I believe there was a third one for his  
11 phone we were applying for as well.

12 Q. So you were working on three separate search warrants?

13 A. Yes, ma'am.

14 Q. Do you present those to the judge in the middle of the  
15 night?

16 A. We did, yes, ma'am.

17 Q. Describe what happened, how that came about for The Court.

18 A. We tried calling the judge multiple times. Basically the  
19 time of night -- it was three o'clock in the morning -- he  
20 didn't answer so I went to his house and I knocked on his front  
21 door and he answered. After he read the search warrants and  
22 knew there was enough probable cause, he signed the search  
23 warrants.

24 Q. Once you got the search warrant signed, did you go home?

25 A. No, ma'am, I did not.

1 Q. What did you do next?

2 A. We went back to the office, executed the search warrant  
3 and began doing what we determined was victimology on the  
4 victim.

5 Q. What is victimology?

6 A. That is when we break down the victim's life and try to  
7 determine why he died and who would kill him. With my  
8 experience with homicide, homicide investigations, in shooting  
9 investigations, it's common that predominantly, most of the  
10 time, the offenders that committed the shootings know the  
11 victims. Very rarely is it a stranger-on-stranger crime.

12 Q. So approximately what time do you begin victimology in  
13 this homicide prior to Mr. Montoya's death?

14 A. Probably about four o'clock in the morning, as other  
15 investigators were out on the field notifying next of kin and  
16 gathering information from them.

17 Q. What do you do next?

18 A. We just continued -- got a game plan together for what we  
19 were going to do for the next day. At that point I started to  
20 feel extremely sluggish, as other investigators did as well. We  
21 had been at work since eight o'clock that morning and had been  
22 16, 17, 18 hours had passed. So we deemed that we were of no  
23 use so we need to go home and get some rest about five o'clock  
24 in the morning.

25 Q. Did you have anything to eat from the time you were home

1 with dinner to the time you had to go back to work at eight  
2 o'clock at night through 4:00 or 5:00 in the morning?

3 A. We had dinner with the family, which is customary, which  
4 is between 6:00 and 7:00, and then until five o'clock in the  
5 morning, I survived on coffee and energy drinks.

6 Q. When you went home, did you go to bed?

7 A. No, ma'am.

8 Q. What did you do when you got home?

9 A. I went to my home office and I got my notepad and I  
10 started writing down the things to do for the next day.

11 Q. Why was that important to stop and take your notes?

12 A. For a couple of reasons. One of them is it's fresh in my  
13 mind. I wanted to write it down. I didn't want to forget it,  
14 and I used to live really close to the police department, so I  
15 didn't get a chance to drive in a vehicle and decompress. My  
16 heart rate was still racing, so I just sat down and took notes.

17 Q. Okay. Was your family awake?

18 A. They were not, no, ma'am.

19 Q. Did you have anything to eat?

20 A. No, ma'am.

21 Q. Did you eventually go to bed?

22 A. Yes, ma'am.

23 Q. What time?

24 A. I got to bed about 6:00 a.m. that morning.

25 Q. And that would have been then on Saturday?

1 A. Saturday.

2 Q. August the 19th of 2017?

3 A. Yes, ma'am.

4 Q. Were you in a bed with your son?

5 A. Yes, ma'am, at the time my one-year-old, my son and my  
6 fiancée.

7 Q. Does he have a time that he typically wakes up?

8 A. 9:00 a.m.

9 Q. Every day?

10 A. Yes, ma'am.

11 Q. Did he wake up on at 9:00 a.m. on August the 19th?

12 A. He woke up and he woke me up as well.

13 Q. Approximately how many hours of sleep did you get?

14 A. About three.

15 Q. When you woke up at 9:00 a.m., what did you do next?

16 A. I played with him for a little bit and I started going  
17 back into taking notes. I was very fortunate at the time that  
18 the City had purchased me a laptop to be able to work from home,  
19 and I just started typing, started typing as I normally would  
20 from the house, investigative notes, my report as well as other  
21 search warrants for various other items.

22 Q. All related to the homicide that occurred on August the  
23 18th?

24 A. Yes, ma'am.

25 Q. Do you take a shower, eat breakfast?

1 A. I don't recall eating breakfast. I do remember taking a  
2 shower. I don't normally -- as is right now, I do not eat  
3 breakfast in the morning.

4 Q. Okay. So how long were you at your house typing, working  
5 away that morning?

6 A. Until about 11:00.

7 Q. 11:00 a.m.

8 A. Yes, ma'am, 11:00 a.m.

9 Q. What did you do at 11:00 a.m.?

10 A. I took a shower and I got ready to go to work.

11 Q. And did you go to work?

12 A. I did.

13 Q. What time did you leave your house?

14 A. About 12:55ish that afternoon.

15 Q. Where did you go?

16 A. I drove to the Pilot gas station and I purchased two Red  
17 Bulls and gas.

18 Q. Why did you get Red Bulls?

19 A. To be able to make it through the day.

20 Q. Okay. What happened next after you were filling gas?

21 A. After I finished getting gas, I stayed there and I called  
22 the secondary investigator, which at the time was the primary  
23 investigator in that shooting, Detective Reyes, and I just asked  
24 him how far he was because we had followups we had to do. He  
25 told me he was on his way in to work.

1 Q. What kind of followups did you have to do?

2 A. We had to go to at that time was the Tigers Den, which is  
3 a bar over at Savannah State, which is where that decedent was  
4 last seen before the shooting in Garden City. So we were going  
5 to go over and interview people and ascertain video surveillance  
6 footage from that, from that facility.

7 Q. Why was it important to immediately act on that  
8 information and leads?

9 A. We didn't know how long their camera system was going to  
10 record for, it gets overwritten and things like that.

11 Q. And so after you discussed with Detective Reyes how far  
12 along he was, what did you do next?

13 A. Almost instantly, when I hung up the phone, I saw multiple  
14 lights and sirens, fire trucks, ambulance, police cars. And  
15 they were all going to the -- I mean, there's a trailer park  
16 directly behind the Pilot gas station where I was going, and  
17 from where I was at, I could see the lights and could see where  
18 they stopped.

19 Just, again, just based on my tenure as a detective, I  
20 figured that with that amount of police presence, ambulances and  
21 fire trucks, something happened that I was probably going to get  
22 called out to.

23 Q. So what did you do?

24 A. I drove to the area.

25 Q. What did you see when you got there?

1 A. I observed I believe the first responding officer or an  
2 officer laying out yellow crime scene tape. I spoke to the on-  
3 duty supervisor, who was I believe Sergeant Nesmith at the time,  
4 and he told me that it appears to be single 46, which in police  
5 jargon that just means a deceased person. I walked up to the  
6 male. Originally I thought his nose was broken so at first I  
7 thought it was going to be a physical struggle that he died  
8 from.

9 Q. And what did you do next?

10 A. I began doing what I typically would for crime scene. I  
11 examined the scene and I examined the body.

12 Q. Approximately what time was it when you went to observe  
13 later determined to be Mr. Montoya on the ground, sir?

14 A. I believe it was about 1:30 in the afternoon, roughly.

15 Q. 1:30 in the afternoon on August the 19th?

16 A. Yes, ma'am.

17 Q. Of 2017?

18 A. Yes, ma'am.

19 Q. And you were coming off about two to three hours of sleep;  
20 is that accurate?

21 A. Yes, ma'am.

22 Q. And just working another homicide investigation?

23 A. Correct.

24 Q. Without breakfast?

25 A. Correct.

1 Q. And did you have lunch then?

2 A. No, ma'am.

3 Q. You began processing the scene as a crime scene  
4 technician?

5 A. Yes, ma'am.

6 Q. Tell The Court what you did, please.

7 A. So the first thing -- so when we work homicides, we try to  
8 work homicides two detectives at a minimum.

9 Q. Why is that?

10 A. For various reasons. One you need a scribe, somebody  
11 taking notes. And then you just, people forget things. You  
12 might forget to ask an important question that Detective Number  
13 2 remembers, or if you interview somebody who is a witness, we  
14 don't know if, being so close in time as to when the incident  
15 happened, they might be a suspect that may want to do harm to  
16 you. We just don't know.

17 So our policy is we try to work with two per case. At  
18 that -- this particular time, it was a total of three detectives  
19 working that entire week, myself, Detective Reyes, Detective  
20 White.

21 Detective White is a pastor and he does have his own  
22 church. He did come out for the initial homicide which had  
23 occurred on the 17th -- on the day before, on the 18th of  
24 August.

25 Q. On the Friday?

1 A. Correct, and he was well versed enough with this  
2 investigation that I felt comfortable letting Detective Reyes  
3 work the investigation and Detective White being the secondary.

4 Q. Working the homicide investigation from Friday?

5 A. The day before. Yes.

6 Q. The 18th?

7 A. And then I would take the primary on August the 19th and  
8 have my captain, Captain Papp, who had been -- who had about six  
9 months' experience as a detective and had never worked a single  
10 case in his 20-plus years as a police officer.

11 Q. And prior to August of 2017, had you investigated other  
12 homicides?

13 A. I had.

14 Q. Did you have the most homicide investigation experience  
15 with Garden City at that time?

16 A. As far as I know.

17 Q. Were there any other reasons why you determined it was  
18 necessary for you to stay with the second homicide involving Mr.  
19 Montoya?

20 A. Again, we had enough upward movement on the initial  
21 incident and Detective Reyes was primary on that. This one, all  
22 parties involved were Spanish-speaking only, so I knew that I  
23 had to be primary compared White who didn't speak any Spanish so  
24 that had a dominant role as well.

25 Q. What did you do while on scene?

1 A. So I did what I normally do. I start processing the crime  
2 scene. First thing I did was take pictures. Pictures always  
3 key on any investigation. And I took photos on the scene as I  
4 found it.

5 While processing the crime scene, I was approached by an  
6 officer -- I can never remember which one it was at this time --  
7 that somebody needed to speak to me. I broke off what I was  
8 doing and I made contact with this young lady.

9 Q. Did you determine who it was?

10 A. Yes, ma'am.

11 Q. And did you speak with her?

12 A. I did.

13 Q. And what did you learn, sir?

14 A. That the decedent was her brother.

15 Q. Mr. Montoya's sister?

16 A. Correct.

17 Q. Was that an emotional experience?

18 A. Yes, ma'am.

19 Q. What did you do next?

20 A. Detective White and Detective Reyes, I was -- I started  
21 gathering facts at that moment that I deemed were detrimental --  
22 or they were very important to this case. It was very strong  
23 facts, accusatory facts, so I knew that I had to change my role  
24 as crime scene technician to primary investigator and start  
25 doing detective work, so I requested, since they were both

1 working, I requested they process the crime scene while I  
2 started doing interviews.

3 Q. And what type of information were you receiving?

4 A. I was receiving that they speculated that they knew who  
5 had killed the decedent.

6 Q. And who is "they"? Who were you speaking to?

7 A. Initially it was the sister, but that in turn turned into  
8 the mother who as well turned into his wife.

9 Q. So in approximately what kind of time period are we  
10 talking about where you interviewed the three family members of  
11 Mr. Montoya?

12 A. I can't give specific timing at this time but it was -- it  
13 was one behind the other, behind the other, so it looks like it  
14 was within two hours' time. I mean, I would venture it was  
15 within an hour's time. It was rapidly evolving.

16 Q. Still on Saturday afternoon?

17 A. Still Saturday afternoon, yes, ma'am.

18 Q. Did you receive any additional documentation in your  
19 investigation?

20 A. I did, yes, ma'am.

21 Q. What did you receive?

22 A. I went back to the residence, the decedent's residence on  
23 Village Drive, which is within walking distance of where he was  
24 killed, and they provided me documents while inside of his  
25 trailer as far as multiple letters, complaints.

1 Q. And what type of information was Mr. Montoya's family  
2 providing you?

3 A. It was documentation showing he was -- what I would deem  
4 as a whistleblower. He was providing information as far as he  
5 had filed a complaint against his boss with the Equal Employment  
6 Opportunity Commission.

7 Q. What kind of complaint?

8 A. That he was -- it was -- I only can relate to human  
9 trafficking. He was -- he had illegals working there for less  
10 than minimum wage and he was terminated because he had whistle-  
11 blowed.

12 Q. Okay. Did you receive any type of letters from the  
13 family?

14 A. I did, yes, ma'am.

15 Q. Tell The Court about that, please.

16 A. It was four letters, which were notarized; they were  
17 signed. The letters were basically outlining what the EEOC  
18 complaint was. It was three independent individuals, three  
19 different people, and the fourth letter was from Mr. -- the  
20 decedent himself.

21 Q. From Mr. Montoya?

22 A. Correct.

23 Q. Would the letters, did they have identities of who was the  
24 purported writer of the letters?

25 A. They had names and they also had telephone numbers.

1 Q. Did you learn anything more about the letters from the  
2 family?

3 A. I don't recall at this time.

4 Q. What did you do next?

5 A. After all interviews were compiled on scene, with meaning  
6 the wife, the mother, a fourth young lady -- I can't remember  
7 her name. She just referred to her as a Puerto Rican.

8 Q. Is that Ms. Carmen Brown?

9 A. Ms. Carmen Brown, yes, ma'am, and his sister, I went back  
10 to the Garden City Police Department and I began doing  
11 victimology.

12 Q. And describe the victimology that you did for Mr. Montoya?

13 A. I ran him through the multiple local reporting databases.  
14 I didn't see anything of notoriety as far as arrest records,  
15 prior police reports, were showing him in a negative fact. None  
16 of the reports had any information as to why he would be killed.

17 So then I went back to the letters themselves, and I made  
18 phone calls to each one of the three in the letter as far as  
19 trying to interview them, bring them in for an interview to be  
20 able to validate what's on these letters.

21 Q. Did you also call the EEOC?

22 A. I did, yes, ma'am. On Saturday, but unfortunately, it  
23 being I guess a federal entity, nobody answered the phone on  
24 Saturday.

25 Q. Did anyone return your phone calls?

1 A. One male did, yes, ma'am.

2 Q. And who was that?

3 A. Mr. Joel Reyes.

4 Q. And what happened when you spoke with Mr. Reyes?

5 A. At first I spoke to him and I told him to come by the  
6 Garden City Police Department to talk to me. I did not tell him  
7 on the phone what had happened. He was a little apprehensive at  
8 first but he ended up coming and speaking to us.

9 Q. Prior --

10 A. We did --

11 Q. I'm sorry. Prior to speaking with Mr. Reyes did you find  
12 any other information concerning your investigations of  
13 significance to you?

14 A. Yeah. We -- we -- again, they had provided, the family  
15 had provided -- they provided a name as to who they believed had  
16 committed this crime.

17 Q. And who was that?

18 A. Mr. Pablo Rangel-Rubio.

19 Q. And why did they believe Pablo Rangel-Rubio killed their  
20 family member?

21 A. He was -- he was the person that Mr. Eliud Montoya filed  
22 the formal EEOC complaint as well filed the complaint with his  
23 business as well as his place of employment.

24 Q. He was his boss?

25 A. He was his boss.

1 Q. And he was the one saying he was hiring illegal aliens?

2 A. Correct.

3 Q. And not paying them correctly?

4 A. Correct.

5 Q. Did you have any contact information or any information  
6 about Pablo Rangel besides his name?

7 A. They provided me with that telephone number as well.

8 Q. What did you do with that information?

9 A. I ran that telephone number through the various databases,  
10 which I'm able to run. One of the databases is Phoenix, which  
11 is the local reporting database. I ran his name, first and last  
12 name, but I did not get a return. I ran his telephone number,  
13 and I got a return as he was an emergency contact for two other  
14 individuals.

15 Q. Pablo was the emergency contact?

16 A. For two males, yes, ma'am.

17 Q. And did you find out who the two males were?

18 A. I did, yes, ma'am.

19 Q. Anything of interest?

20 A. Yes, ma'am. One of them, his name was Refugio. He had  
21 been arrested prior for possession of a firearm.

22 Q. Did you know when the arrest, when he was -- the year of  
23 the arrest?

24 A. I believe it was -- if I'm not mistaken -- from my  
25 recollection, 2014.

1 Q. A couple years before?

2 A. About two or three years prior.

3 Q. Anything about that arrest that caught your attention?

4 A. I was able to ascertain that police report using one of  
5 the local reporting databases, which is LInX. I was able to,  
6 though I can't print from LInX, I'm able to read the actual  
7 police reports themselves. LInX is the Law Enforcement Exchange  
8 Network, which is where local municipalities import their police  
9 reports and you're able to view them.

10 I was able to utilize that case report number provided in  
11 Phoenix and I was able to get the relevant facts surrounding  
12 that arrest at that time.

13 Q. And was this -- who was the arresting agency?

14 A. Savannah Police Department.

15 Q. And what did you learn about that arrest?

16 A. That he was arrested with a .22-caliber handgun.

17 Q. Was that of any significance to you?

18 A. Yes, ma'am.

19 Q. Why is that?

20 A. When I examined the body during the crime scene --

21 Q. Of Mr. Montoya?

22 A. -- of Mr. Montoya, yes, ma'am, the holes on his person  
23 appeared to be smaller, as it would have been made with a  
24 smaller caliber handgun.

25 Q. Something similar to a .22-caliber?

1 A. Correct.

2 Q. What did you do next?

3 A. I printed their information to include their still images  
4 from their booking database, and I just started compiling people  
5 of interest.

6 Q. And in the arrest report of Mr. Refugio, were you able to  
7 determine if the firearm was ever seized?

8 A. A firearm was seized, yes, ma'am.

9 Q. Did you have information in that report what happened to  
10 the firearm, if it was returned at all?

11 A. No, ma'am.

12 Q. You didn't have that in the report?

13 A. Not at that time, no, ma'am.

14 Q. What did you do next?

15 A. I believe there -- I started -- I started -- which is  
16 customary for me -- is when dealing with any homicide  
17 investigation, you're going to do at least one search warrant,  
18 any way you look at it. It's going to be for tower pings; it's  
19 going to be for telephone communications. You're going to do  
20 search warrants, so I type every one of my reports with your --  
21 affiant in search warrant format and I started transcribing my  
22 report that way.

23 Q. Your police report?

24 A. Yes.

25 Q. Put it in a search warrant format?

1 A. Correct.

2 Q. And approximately what time was it now on the 19th of  
3 August?

4 A. Probably around 5:00, a little bit after 5:00.

5 Q. And you're beginning to type your report?

6 A. Yes, ma'am.

7 Q. Do you ever eat? Do you eat?

8 A. I did.

9 Q. How did you eat?

10 A. So I -- my wife -- my fiancée at the time, she knew  
11 that -- again I lived -- I was fortunate, I lived within a  
12 minute walking distance from the police department. She had  
13 surprised me and brought myself -- and she knew Detective Reyes  
14 hadn't eaten as well -- she brought us both dinner that night.

15 Q. And approximately what time did she get there with food  
16 for you guys?

17 A. Between 5:00 and 6:00.

18 Q. And eating, did you press pause for a moment to see your  
19 family and eat?

20 A. No. You -- I ate while typing.

21 Q. Okay. While you were eating, when was the last time you  
22 ate before that?

23 A. That would have been the dinner the night prior, between  
24 6:00 and 7:00 the night prior.

25 Q. Before the first homicide?

1 A. Yes, ma'am, 24 hours prior.

2 Q. And it's still going off about the two to three hours of  
3 sleep?

4 A. Yes, ma'am.

5 Q. And you don't sit down and take a moment to rest with your  
6 fiancée?

7 A. No, ma'am.

8 Q. So what are you doing while you're eating?

9 A. Typing.

10 Q. What happens next?

11 A. I was informed that Mr. Joel Reyes was at the Garden City  
12 Police Department.

13 INTERPRETER DAVIS: Interpreter would like  
14 clarification, who was at the police department?

15 THE WITNESS: Joel Reyes.

16 Q. (By Ms. Groover) Following up on the phone call where you  
17 asked him to come in for an interview?

18 A. Yes, ma'am.

19 Q. And approximately what time do you know that Mr. Reyes got  
20 to the station?

21 A. Specifics, I don't remember. I remember it started  
22 getting -- it was starting to get dark outside, so I remember it  
23 was around seven o'clock that evening.

24 Q. And do you know approximately how long you spent  
25 interviewing Mr. Reyes?

1 A. I believe it was around an hour if I'm not mistaken, give  
2 or take.

3 Q. And does Mr. Reyes speak Spanish?

4 A. He did, yes, ma'am.

5 Q. Was that interview in Spanish?

6 A. It was in Spanish.

7 Q. You're fluent in Spanish as you previously testified?

8 A. Yes.

9 Q. Did you record this interview?

10 A. It was audio- and video-recorded.

11 Q. Prior to today did you have a chance to review the  
12 recording?

13 A. I have, yes, ma'am.

14 Q. To your knowledge is it saved on a CD marked as  
15 Government's Exhibit 5; is that correct?

16 A. Yes, ma'am.

17 Q. Prior to today, have you had a chance to watch that  
18 recording?

19 A. I have.

20 Q. And is it a true and accurate recording of your entire  
21 interview with Mr. Reyes?

22 A. It is.

23 MS. GROOVER: Government would move the admission of  
24 Exhibit 5.

25 MR. ERTEL: No objection.

1 THE COURT: It's admitted.

2 Q. (By Ms. Groover) To your knowledge, later on, did  
3 contractors through Homeland Security then prepare a transcript  
4 of your interview with Mr. Reyes?

5 A. Yes, ma'am, they did.

6 Q. And prior to today did you have an opportunity to review  
7 that transcript?

8 A. I have.

9 Q. Is that transcript both with Spanish on the left and  
10 English on the right of that transcript?

11 A. It is, yes, ma'am.

12 Q. And it's been marked as Government's Exhibit 6. Have you  
13 had a chance to review Government's Exhibit 6, sir?

14 A. I have, yes, ma'am.

15 Q. And compare that to the actual audio recording, which is  
16 Government's Exhibit 5?

17 A. Yes, ma'am.

18 Q. And while comparing, did you notice some edits that needed  
19 to be fixed in the transcript?

20 A. Yes, ma'am, I did.

21 Q. And did you, in fact, make handwritten notes on the  
22 transcript?

23 A. I did, yes, ma'am.

24 Q. And Exhibit 6 actually has your handwritten notes on it;  
25 is that correct?

1 A. Yes, ma'am.

2 Q. And then have you had an opportunity to review the  
3 transcript with your handwritten notes to the audio then of  
4 Exhibit 5?

5 A. Yes, ma'am, I have.

6 Q. And with your edits, is Exhibit 6 a true and accurate  
7 transcript of the interview that you conducted with Joel Reyes  
8 on August the 18th of 2017?

9 A. Yes, ma'am.

10 Q. Excuse me, the 19th.

11 A. The 19th, yes, ma'am.

12 MS. GROOVER: Government would move for the admission of  
13 Government Exhibit 6.

14 MR. ERTEL: No objection.

15 THE COURT: Exhibit 6 is admitted.

16 Q. (By Ms. Groover) What did Mr. Reyes talk to you about?

17 A. So it was a bear with Mr. Reyes when he first started. He  
18 was extremely scared. He starts asking me if -- he wanted to  
19 know the relevant facts as to how he died. He wanted to know  
20 specifics, if it had anything to do with his employment.

21 Q. Did he know Mr. Montoya?

22 A. He did, yes, ma'am. He referred to him as a good guy is  
23 the way he referred to Mr. Montoya. I guess the whole point of  
24 the interview was to -- was to provide him with that written  
25 statement and then just validate the information that was

1 written on that actual form itself.

2 Q. And you said that he was scared. What do you mean by that  
3 and how did you know that?

4 A. His mannerisms. He was -- he was -- he was visibly  
5 shaking, and then just the type of questions he was asking me,  
6 so when I was asking, when I asked him specific questions, he  
7 said he didn't want any trouble. He didn't want any trouble.

8 That led me to believe that he was fearful for his life.  
9 He had just found out that his friend had been killed and now  
10 he's fearful that if he speaks to me retaliation is going to  
11 come.

12 Q. Did he also work with Mr. Montoya?

13 A. He did during some point, yes, ma'am.

14 Q. Did he talk to you about his employment?

15 A. Yes, ma'am.

16 Q. And what in general did he tell you?

17 A. That -- from Mr. Joel?

18 Q. Yes.

19 A. That he, that he -- so I read the letter to him in  
20 Spanish, and I asked him if what was said in the letter was true  
21 and he said yes. So we basically asked for specifics as to what  
22 was written in the letter about himself.

23 Q. Did he did speak -- did he read English at all?

24 A. He could not.

25 Q. Was this letter in English or Spanish?

1 A. It was in English.

2 Q. So did you read it word for word or did you summarize?

3 A. I sum -- I did a summation, summarized it.

4 Q. And he explained that it was true?

5 A. Yes, ma'am.

6 Q. Was there anything about the letter that he told you was  
7 not true?

8 A. The content of the letter, no. The signature, yes.

9 Q. Well, generally what kind of allegations and information  
10 was in that letter?

11 A. That was basically he talked about monetary compensation.  
12 He's not properly being compensated for his wages and talks  
13 about the social security numbers were purchased. If I can  
14 refer to the notes, it talks about how long he's been working  
15 there, and then it specifies the name Pablo Rangel was specified  
16 in the letter as well.

17 MS. GROOVER: Your Honor, may I approach the witness?

18 THE COURT: You may.

19 Q. (By Ms. Groover) Sir, I'm handing you, for the record,  
20 what's been marked as Government's Exhibit 12. Can you take a  
21 look at Exhibit 12 and tell me if you recognize that, sir?

22 A. I do, yes, ma'am.

23 Q. Is that a packet of the letters?

24 A. Yes.

25 Q. Can you describe for The Court generally what it is?

1 A. It is a letter specifying individuals' names. It's on the  
2 very top they all say I believe it's "To Whom It May Concern."  
3 They are all dated July 27th of 20 -- the first one is dated  
4 July 27th of 2017, and they all specify it involves their  
5 maltreatment by the business.

6 Q. Are these the four letters that you received from Mrs.  
7 Montoya on August the 19th of 2017?

8 A. Yes, ma'am.

9 Q. Are these true and accurate copies of the letters you  
10 received from her?

11 A. Yes, ma'am, they are.

12 MS. GROOVER: Government would move for the admission of  
13 Exhibit 12.

14 MR. ERTEL: No objection.

15 THE COURT: Admitted.

16 Q. (By Ms. Groover) Page 1 of Exhibit 12, is this one that  
17 purportedly signed by Joel Reyes?

18 A. Yes, ma'am, it is.

19 THE COURT: Ms. Groover, do you have additional copies?

20 MS. GROOVER: Yes, sir, I apologize.

21 Q. (By Ms. Groover) Is this the letter that you read or  
22 summarized in Spanish to Mr. Reyes?

23 A. Yes, ma'am.

24 Q. In the recorded interview?

25 A. Yes, ma'am.

1 Q. Can you tell us what he told you about Mr. Pablo Rangel,  
2 if anything?

3 A. As far as the letter goes or what he explained to me?

4 Q. What he explained to you.

5 A. I guess he -- I guess he purchased --

6 THE COURT: I believe we've lost the video connection  
7 with Mr. Olive. Mr. Asinc, cocounsel, is still present. Do you  
8 have any objection to proceeding with this witness at this  
9 point?

10 MR. ASINC: No, Your Honor, I have no objection at this  
11 point to proceeding at this point.

12 Q. (By Ms. Groover) What did Mr. Reyes tell you in general  
13 about Pablo Rangel-Rubio?

14 A. He said that Pablo was a supervisor for the company, Wolf  
15 Tree. He said that I guess when he got hired on, he was hired  
16 under an alias with proper social security numbers. This is  
17 important because Mr. Joel Reyes is an illegal alien and does  
18 not have a social security number.

19 Q. And did he explain how he was getting paid?

20 A. Yes, ma'am.

21 Q. Can you describe for The Court how he explained he was  
22 getting paid?

23 A. He would, from what he best described, was he got paid  
24 \$10.00 an hour. Whether he worked 60 hours, he would get  
25 \$600.00. Whether he worked 80 hours, he would get \$800.00. He

1 did not get paid overtime. He would receive a check under his  
2 alias; however, he would not see the check. He would only  
3 receive cash compensation for the work he did.

4 Q. And did he explain to you who was paying him in cash?

5 A. It was Pablo Rangel.

6 Q. And did he explain to you how he was getting the  
7 identities to work?

8 A. Yes, ma'am. We had a little bit of trouble going back and  
9 forth on understanding that actual aspect. I brought it up to  
10 him two or three times before we finally were able to identify  
11 how it was.

12 I asked him because the letter says it was for \$1500.00,  
13 he would pay \$1500.00 for the social security numbers and the  
14 identification; however, that money was taken out of his  
15 paycheck.

16 Q. Did he come out and say, no, he never paid \$1500.00?

17 A. He did. He said he didn't -- did not physically pay  
18 \$1500.00.

19 Q. But did you keep questioning him about how he got paid and  
20 how he got -- how he paid for the social security numbers?

21 A. Yes.

22 Q. And what generally were you able to determine from Mr.  
23 Reyes?

24 A. That, because he was getting paid cash, he would not see  
25 his physical paycheck.

1 THE COURT: I will note for the record that Mr. Olive  
2 has reconnected by video.

3 THE WITNESS: So the money would come directly out of  
4 his paycheck. He would receive \$10.00 compensation per hour.

5 Q. (By Ms. Groover) What happened if he would work overtime?

6 A. He wouldn't get paid. He would strictly get paid the  
7 \$10.00 an hour.

8 Q. What happened if he would be entitled to a raise or a  
9 promotion; would he get paid more?

10 A. I think he said he complained one time and I think in the  
11 report he said he got a 10-cent raise or 15-cent raise.

12 INTERPRETER DAVIS: I'm sorry, can you repeat that last  
13 answer?

14 THE WITNESS: I believe he got a 10- or 15-cent raise.

15 Q. (By Ms. Groover) And did he ever explain who was taking  
16 money off the top, if you will?

17 A. He specified it was Pablo Rangel.

18 Q. So to be clear, he did specifically deny paying \$1500.00  
19 to Pablo Rangel?

20 A. Correct.

21 Q. For the identity to work?

22 A. He did not pay him in cash. He was getting paid in cash  
23 and the money was taken off of that.

24 Q. But it says in this letter purportedly signed by him that  
25 he paid \$1500.00; is that correct?

1 A. Correct.

2 Q. Did you talk to him about this letter, whether he wrote  
3 it?

4 A. Correct. He told me he did not write the letter.  
5 However, everything in this letter is true and accurate.

6 Q. So did he tell you who did write the letter?

7 A. I don't remember if he was -- if he ever specified who it  
8 was. I think he speculated that it was Mr. Eliud.

9 Q. Did he ever say if he signed this letter?

10 A. He said he did not sign the letter.

11 Q. And does he read English?

12 A. He does not read English.

13 Q. At some point during your interview, did he adopt the  
14 letter as his own somehow?

15 A. Yes, ma'am, he did.

16 Q. Can you describe that for The Court?

17 A. If I can find it in my conversation.

18 Q. Direct your attention to Page 22 and 23 of Exhibit 6 and  
19 see if that refreshes your recollection?

20 A. I do, yes, ma'am. Would you like me to read the statement  
21 or you just want me to do a summary?

22 Q. You can summarize it.

23 A. He's saying that the letter was an agreement that they had  
24 between them, meaning him and Mr. Eliud.

25 Q. And did he also explain the situation about these letters?

1 MR. ERTEL: One moment, let me know what pages?

2 MS. GROOVER: Page 22 and 23.

3 MR. ERTEL: Thank you.

4 Q. (By Ms. Groover) Did he also explain how these letters  
5 came about?

6 A. I don't recall. I think he said it's because they were  
7 trying to get Pablo out of the business. That was the purpose  
8 of the letters.

9 Q. Did he indicate whether or not he was aware of other  
10 people submitting letters?

11 A. He was.

12 Q. And did he indicate to you whether or not he was included  
13 in that?

14 A. I believe he was, yes, ma'am. What was interesting about  
15 that was we did not give him a chance to look at the other  
16 letters; however, one of the other letters I believe that was  
17 written by Mr. Reuben Ramirez Hernandez, he was able to specify  
18 the facts on that one, that a tree limb had fallen on top of him  
19 and he was ill-treated because of that.

20 Q. So Mr. Reyes was aware that another person was ill-treated  
21 because of the injury with a tree?

22 A. Correct.

23 Q. But he had not seen the letter?

24 A. He had not seen the letter.

25 Q. What if anything did that indicate to you about Mr. Reyes'

1 credibility?

2 A. That he knew, he knew about this letter. He knew about  
3 the information associated to this as well as the other  
4 complainants as well.

5 Q. Did you talk to him at all about who he believed could  
6 have harmed Mr. Montoya?

7 A. At some point, we started talking about the Rangel family  
8 and he -- I asked him at any point if he knew if Pablo could  
9 have hurt him and he says no but he knows -- that he knows  
10 people that can.

11 Q. Okay, and the context of that statement, were you talking  
12 about his family members at the time?

13 A. Prior to that question, we were talking about the Rangel  
14 family, and he was specifying how they are a large family. They  
15 have a large family in Mexico, and they have a large family in  
16 Georgia as well.

17 Q. Did you ask him whether or not he ever saw the Rangel  
18 family with firearms before?

19 A. I did.

20 Q. And what did he tell you?

21 A. Not that he can recall.

22 Q. At some point, does he specifically say he's never seen  
23 them with a firearm?

24 A. Correct.

25 Q. Did he also admit they may have them in their home?

1 A. He said they could have them in their home, yes, ma'am.

2 Q. Does he also provide a statement to the effect of he does  
3 not believe that Mr. Pablo would hurt him but has someone who  
4 would?

5 A. Correct.

6 Q. Referring to Mr. Montoya?

7 A. Correct.

8 Q. And the contents of your interview, it's documented in the  
9 transcript; correct?

10 A. Correct.

11 Q. Based on your interview, about how long did the interview  
12 last?

13 A. Between 30 minutes to an hour.

14 Q. He got there about seven o'clock or so?

15 A. Yes, ma'am.

16 Q. So about 7:30, eight o'clock it ends?

17 A. As best as I can remember, yes, ma'am.

18 Q. What do you do next after you interview Mr. Reyes?

19 A. So we had his information. I continued trying to get sort  
20 of hold of other people in this letter through their telephone  
21 numbers. In fact, in the interview I asked Mr. Reyes for, if he  
22 knew anybody else's telephone number, and he provided me a  
23 number for I believe Juan Ramirez. I can't remember. I believe  
24 it was a match the same number on the actual form itself.

25 Q. And were you able to get in touch with him?

1 A. Not that evening, no, ma'am.

2 Q. What did you do next?

3 A. Started typing a search warrant for Pablo's residence.

4 Q. Why did you do that, sir?

5 A. We had every one of these allegations. We had the  
6 letters. We had Joel's statement. We had the EEOC complaint.  
7 We had the -- Refugio, him being arrested with a small caliber  
8 firearm. We felt we had enough probable cause to get a search  
9 warrant for his residence.

10 Q. You started working on a search warrant for 271 Milton  
11 Rahn Road; is that correct?

12 A. Yes, ma'am.

13 Q. What time of day was that?

14 A. So I had started typing prior. I continued at about eight  
15 o'clock, all while making phone calls to the various federal  
16 agencies for assistance.

17 Q. Why were you calling federal agencies for assistance?

18 A. Two-fold, first one being the fact that these letters are  
19 pretty damning as far as possibility for human trafficking. In  
20 the interview with Joel Reyes, he says he has a large family  
21 that stays with him in Effingham County, as well as when I  
22 called Effingham, which is where Milton Rahn Road is at, the  
23 police were aware of that residence for prior gun discharge in  
24 the area.

25 Q. Did you speak with someone in particular who advised you

1 of that?

2 A. Yes, ma'am.

3 Q. Who did you speak with?

4 A. Detective Timmy Dickey with the Effingham County Sheriff's  
5 Department.

6 Q. And what specifically did he tell you about the shots in  
7 the area?

8 A. It was -- they have gotten calls for dispatch for multiple  
9 gunfire in the area.

10 MR. ERTEL: I'm going to object to this. There is  
11 nothing in the affidavit about it so it has no relevance to  
12 what -- to the probable cause in the case, no mention of it in  
13 the affidavit.

14 THE COURT: Respond, Ms. Groover.

15 MS. GROOVER: It goes to what he was doing in his  
16 investigation and the concerns he was taking and the steps he  
17 was taking in obtaining and executing a search warrant, Your  
18 Honor. I believe it is relevant.

19 THE COURT: Due to the allegations of reckless  
20 disregard, I'm going to overrule the objection and allow him to  
21 answer the question.

22 THE WITNESS: So they had multiple gun discharges in the  
23 area. He says they have ridden out there before and it is a  
24 very large --

25 THE COURT: One moment. For the record we're having an

1 issue with the headsets.

2 MR. ERTEL: Okay, it's resolved.

3 THE WITNESS: It is a very large -- they refer to at  
4 this time as a country area. It is a dirt road that leads one  
5 way in and one way out. It's not good for -- his basic words is  
6 if a car drives down there, we're going to get burned, which  
7 means we're going to get caught doing surveillance.

8 Q. (By Ms. Groover) So what do you do next?

9 A. Call the FBI. FBI tells me, "Can't do nothing for you;  
10 call Homeland Security," which is how HSI was involved in this  
11 case. I ended up calling the sergeant -- I cannot remember his  
12 name -- from the Effingham County Sheriff's Department as to the  
13 proper channels in applying for a search warrant in their  
14 jurisdiction.

15 Q. Were you planning on getting a search warrant that night?

16 A. I was.

17 Q. August the 19th of 2017?

18 A. A search warrant was typed up that night ready to go. My  
19 captain says "Stop."

20 Q. Approximately what time was this when you were told to  
21 stop?

22 A. It was between 9:00 and 10:00 p.m.

23 Q. Why did your captain tell you to stop?

24 A. He said in my face he could see I was tired and he didn't  
25 want me to make the wrong decision by having to continue pushing

1 forward when I'm coming off of three hours of sleep.

2 Q. And another homicide investigation the night before?

3 A. Correct.

4 Q. So do you make the decision to not obtain the search  
5 warrant that night?

6 A. Yes, ma'am.

7 Q. What did you do next? Do you go home and go to bed?

8 A. I ended up clocking out that evening about 11:00 p.m.  
9 However, I did not leave until almost midnight.

10 Q. So you indicated that you were told to kind of stand down  
11 on presenting the warrant about nine or ten o'clock night but  
12 didn't leave until midnight. What were you doing in the  
13 meantime, sir?

14 A. I was getting a game plan ready for tomorrow.

15 Q. What do you mean by that?

16 A. Again, it's what I deem a high-stress situation. I wanted  
17 to make sure we had all people in the right place at the right  
18 time, so I had to get, just for logistics purposes, I wanted to  
19 make sure we had enough people. We had to call some Garden City  
20 officers in to be there in the morning with us, staging area.  
21 There were multiple things that I had to get done before signing  
22 and executing the search warrant.

23 Q. Were you also able to secure an appointment time with the  
24 judge to obtain the warrant?

25 A. Yes, ma'am.

1 Q. Tell The Court about that.

2 A. The sergeant from Effingham was able to get her to meet  
3 with me at the Effingham County Sheriff's Department complex at  
4 11:00 a.m. on August the 20th.

5 Q. Is that a Sunday?

6 A. It is a Sunday, yes, ma'am.

7 Q. So that night, you secured an appointment for the next  
8 morning?

9 A. Yes, ma'am.

10 Q. Had you ever been to meet with that magistrate before?

11 A. That's the first time I had been to Effingham, that side  
12 of Effingham.

13 Q. Did you need assistance from the Effingham County  
14 officers?

15 A. Yes, ma'am.

16 Q. And what specifically did they help you out with?

17 A. So from my experience, certain judges like things a  
18 certain way. I know our judge was specific on what he liked on  
19 our search warrants, so I called them and I found out  
20 specificity on what to put on the actual verbiage, scope, things  
21 to be done as part of the search warrant.

22 I didn't want to drive all the way to Effingham to have a  
23 grammatical error and have to drive 45 minutes back to Garden  
24 City just to fix a grammatical error, so again I had to get the  
25 logistics of how to properly make, annotate changes from a

1 search warrant in Garden City by not being in Garden City while  
2 in Effingham County.

3 Q. Did they have a specific form to use or was it just like a  
4 Word document that you could pull up on your computer anywhere?

5 A. Ours is a specific form that comes in with our computer  
6 software.

7 Q. Did Effingham County also have computer software?

8 A. They did, yes, ma'am.

9 Q. Did you have that software on your computer?

10 A. Did not.

11 Q. How far away is Effingham County from your home base, your  
12 Garden City Police Department and your home office?

13 A. It's about 45 minutes.

14 Q. So your report, your affidavit that you're typing, are you  
15 typing that in your software or like in a Word document?

16 A. Both. So I type everything into a Word document and I  
17 copy everything and place it into the actual template that is  
18 done already in the actual software.

19 Q. So you didn't have the software for Effingham County;  
20 correct?

21 A. I did not.

22 Q. So how did you get your report to the right format?

23 A. We had to purchase Adobe, some form of the Adobe to be  
24 able to change the initial verbiage, little minute things.

25 Q. Did you purchase it that night or the next morning?

1 A. We purchased it the next morning when it was -- there  
2 was -- the whole purpose of going to Effingham County, I was to  
3 meet with the sergeant at seven o'clock that morning and go over  
4 the particulars on the search warrant, the logistics, and just  
5 anything that needed to be changed in the search warrant to get  
6 it done before we meet with the judge.

7 Q. So let's back up and finish your evening on Saturday, the  
8 night that Mr. Montoya was killed?

9 A. Yes, ma'am.

10 Q. How long did you stay at the office?

11 A. I believe about midnight.

12 Q. Where do you go?

13 A. I went home.

14 Q. And did you get to go to bed?

15 A. I wish. No, ma'am. It was -- again, I had been running  
16 on caffeine, so I laid down and I could feel my heart, I could  
17 feel every beat coming out of my heart, so I stood up and I  
18 started -- just again, I have a computer. I was able to type  
19 for about 30 minutes and then the coffee and the caffeine start  
20 going away, and I was able to lay down and go to sleep.

21 Q. Finally crashed?

22 A. Yes, ma'am.

23 Q. What time did you wake up?

24 A. Between 5:30 and 6:00.

25 Q. Did you eat breakfast?

1 A. No, ma'am.

2 Q. So the last time you ate in about two days was just the  
3 one meal that your fiancée brought you?

4 A. Yes, ma'am.

5 Q. You got up at 5:30 a.m. What did you do next?

6 A. I took a shower, got in my unmarked CID vehicle, and I  
7 drove to Effingham County.

8 Q. Approximately how long a drive was it again?

9 A. About 45 minutes.

10 Q. You left about 6:00 a.m. or so or what time?

11 A. About 6:00 a.m. because I did wait for them to get there  
12 and open the doors for me.

13 Q. And you were meeting them at 7:00?

14 A. At 7:00.

15 Q. What happened when you got there at 7:00 a.m.?

16 A. I let the sergeant proofread the search warrant. He read  
17 the verbiage. He didn't see any significant errors. He did  
18 advise that on their search warrants that Judge Rhonda Sexton,  
19 she likes particularity as far as on the scope, she likes, the  
20 area to be searched, she likes driving directions, so we had to  
21 add that from Mapquest, and he also said, based on the fact we  
22 were unable to do a drive-by by the residence, he said the best  
23 thing to do was to get a Google area map and attach it as  
24 exhibits to the search warrant.

25 Q. So you are spending time making sure you have the right

1 format that the judge typically likes to see?

2 A. Correct.

3 Q. Okay, and besides this sergeant from Effingham County, did  
4 you have anybody else review the warrant?

5 A. I believe -- yes, Captain Papp, who is our CID commander.

6 Q. With Garden City?

7 A. With Garden City, since he was my immediate supervisor, or  
8 because my supervisor was on vacation, he proofread the search  
9 warrant.

10 Q. And the people who read the search warrant, were they  
11 familiar with all the facts in the investigation like you were?

12 A. Yes, through oral testimony that I provided them.

13 Q. Did you update Captain Papp, things like that, about the  
14 case, as you're developing facts?

15 A. Correct. Captain Papp was my -- what I would call him as  
16 secondary lead in this investigation.

17 Q. Does he speak Spanish?

18 A. He does not.

19 Q. So was he aware of your interview with Joel Reyes?

20 A. Yes, ma'am. He saw some of it through our two-way mirror  
21 and then I just provided him with a summary of what the  
22 interview was about.

23 Q. But he couldn't understand it?

24 A. No, ma'am, he could not.

25 Q. He was basing it off your summary?

1 A. Correct.

2 Q. And the same thing with the sergeant from Effingham  
3 County. Was he familiar generally with the facts of your  
4 investigation?

5 A. Just what I provided in summary, yes, ma'am.

6 Q. That you orally provided to him?

7 A. Correct.

8 Q. After you had several people review it, what do you do  
9 next?

10 A. We -- I'm waiting for my officers to get there. I make  
11 the corrections in the actual search warrants.

12 Q. What corrections were you making?

13 A. Where I added the exhibits and I added the actual, the  
14 Mapquest directions of the location.

15 Q. So you complied with the judge's preferences?

16 A. Correct. That took -- that took about an hour and a half  
17 to do. It came to the point we had to realize we had to  
18 either -- we tried printing it from our officers that we had  
19 there from Garden City's computers and their printers in their  
20 vehicle; however, their printers, they printed thermal prints,  
21 thermal imaging, which is -- I did not deem that that was  
22 satisfactory to provide to a judge. So we ended up getting  
23 Adobe -- I don't remember what form of Adobe it was -- where we  
24 were able to copy and paste the narrative into an actual Adobe  
25 document.

1 Q. What did you do next?

2 A. We waited for the FBI and HSI to get there, and we just do  
3 a briefing as to the particulars, the search warrants, the  
4 locations. We had the Google map, and we started advising which  
5 agents were going to go where and which officers were going to  
6 go where, make sure we had where the nearest trauma hospital was  
7 at, as well as we had a trauma officer with each unit.

8 Q. You were executing your operation plan?

9 A. Correct.

10 Q. Staging it?

11 A. Yes.

12 Q. Were you assigning teams?

13 A. Yes, ma'am, we were.

14 Q. Was it your understanding that there were multiple  
15 buildings on this property that you were about to search?

16 A. The information that I got with the prior officers'  
17 experience and having driven through there with the gun  
18 discharge calls was three, three structures.

19 Q. Had you ever personally been out there?

20 A. Not before the search warrant, no, ma'am.

21 Q. Okay. So you knew you needed at least three search  
22 warrant teams; correct?

23 A. Yes, ma'am.

24 Q. In addition to potential victims and trauma, things like  
25 that?

1 A. Correct.

2 Q. What did you do next?

3 A. After we finished this, it was roughly about 10:30. I  
4 waited for Judge, the judge to arrive, which is about 11:00,  
5 11:00 a.m.

6 Q. That was your appointment time?

7 A. Yes, ma'am.

8 Q. Do you believe you got there right about the appointment  
9 time?

10 A. It was right about the appointment time, yes, ma'am.

11 Q. Tell The Court about your appointment with the judge. How  
12 did that go?

13 A. As was customary at that time, I got -- same thing I've  
14 got here, I bring a binder with me with all the relevant  
15 information pertaining to a case, and in this particular  
16 incident, I would have brought every one of these documents. I  
17 brought the EEOC complaint. I brought the search warrant itself  
18 and I provided her with oral testimony as to the surrounding  
19 facts of this case.

20 MR. ERTEL: I didn't hear what you just said.

21 Q. (By Ms. Groover) Could you repeat your answer, please,  
22 provided --

23 A. I provided oral testimony, yes, ma'am.

24 Q. At the time under Georgia law, were you allowed to  
25 supplement affidavits with oral testimony?

1 A. Yes, ma'am, we were.

2 Q. And was that interaction recorded at all?

3 A. It was not.

4 Q. Are they now recorded?

5 A. If they are to be done, yes, but it's not customary for us  
6 to do it that way anymore.

7 Q. You've since changed the practices?

8 A. We have since changed the practices.

9 Q. But at the time, provided oral testimony that was not  
10 recorded?

11 A. Correct.

12 Q. Explain the process then how it was that you provide oral  
13 testimony to The Court at this particular search warrant.

14 A. I outlined the facts of the case. I start off with the  
15 beginning and I get to the point where we are right now, and so  
16 I say on --

17 Q. Let me stop you for just a moment. Are you placed under  
18 oath prior to doing this?

19 A. Yes, ma'am, I am.

20 Q. The judge placed you under oath?

21 A. Correct.

22 Q. And then after you're placed under oath, what do you do?

23 A. I give her a summation of actually what, how we got to  
24 where we are right now, from A to Z. That included the dispatch  
25 time, the officers' arrival, my facts of what I saw to include

1 the fact that there was -- the individual was deceased, the fact  
2 that it appeared he had been shot with a small-caliber firearm,  
3 the fact that we had three of these sworn statements and the  
4 verbiage of each one of these sworn statements, the interview  
5 with Joel Reyes, the complaints. We provided the -- provided  
6 her a still image of Refugio and the other individual that we  
7 believed was going to be inside the residence. We also informed  
8 her Refugio's prior arrest with a .22-caliber firearm.

9 Q. Do you recall if she had any questions, any specific  
10 questions that she asked?

11 A. I don't recall.

12 Q. Do you recall if she had any concerns at all about the  
13 proposed search warrant?

14 A. No, ma'am.

15 Q. If she would have had questions, what's typically the  
16 practice would have been?

17 A. If she would have had a question with the search warrant  
18 itself, as far as for lack of probable cause, we would leave,  
19 and we would retype another search warrant with the relevant  
20 facts.

21 Q. Do you recall anything like that happening in this case?

22 A. I've never had that happen in any case.

23 Q. So is it fair to say she did not have any concerns with  
24 the probable cause in the warrants?

25 A. Correct.

1 Q. And her conclusions would have been based off the four  
2 corners of the documents and your testimony under oath?

3 A. Yes, ma'am.

4 Q. And do you recall what time the warrant was actually  
5 signed?

6 A. I believe it was shy of 11:30, 11:23 in the morning.

7 Q. I believe before you should be Government Exhibit 7. Is  
8 that a true and accurate copy of the search warrant that was  
9 signed?

10 A. Yes, ma'am.

11 MS. GROOVER: Government would move for the admission of  
12 Exhibit 7.

13 MR. ERTEL: No objection.

14 THE COURT: It's admitted.

15 Q. (By Ms. Groover) Is it fair to say that if your  
16 appointment was 11:00, signed at 11:23, you were meeting with  
17 the judge for approximately 23 minutes?

18 A. Yes, ma'am.

19 Q. This was in August of 2017?

20 A. It was.

21 Q. Years later, did you have an opportunity to go back and  
22 review your warrant and your entire investigation?

23 A. Yes, ma'am.

24 Q. Including the edited transcript that you provided of Joel  
25 Reyes?

1 A. Yes, ma'am.

2 Q. And did you happen to notice that there were a few areas  
3 where you could have been more clear, included something more or  
4 perhaps explained something better?

5 A. Yes, ma'am.

6 Q. Also noticed a few errors and misstatements, quite  
7 frankly?

8 A. Correct.

9 Q. Are you aware that the Defense has filed a motion  
10 outlining some of those concerns that they have?

11 A. Yes, ma'am.

12 Q. Have you had a chance to review that motion?

13 A. I did.

14 Q. I'd like to go through every one of those with you. Your  
15 Honor, may I have just a moment to grab the motion?

16 THE COURT: Yes.

17 Q. (By Ms. Groover) Thank you, I apologize.

18 Referring to the transcript on Page -- which is Government  
19 Exhibit 6, one of the -- one of the allegations in the motion  
20 is that you misrepresented that Joel Reyes submitted a document  
21 that was, quote, accusing Pablo of fraud. Were you aware of  
22 that, sir, aware of that accusation?

23 A. As far as the accusation, yes, ma'am.

24 Q. And have you had a chance to review the transcript of your  
25 interview with Joel Reyes?

1 A. I have.

2 Q. And referring specifically to Page 22 and 23 of the  
3 transcript, can you describe for The Court what it is about your  
4 interview with Mr. Reyes where you believe he was accusing Pablo  
5 of fraud?

6 A. So the fact that he agreed to this -- the information on  
7 the affidavit as well as him agreeing to the information on  
8 there was true and accurate.

9 Q. And when you're saying about the information is true and  
10 accurate, at that time of the interview, were you referring to  
11 Page 1 of Government's Exhibit 12?

12 A. Page 1?

13 Q. Page 1 of Government's Exhibit 12, the letter.

14 A. Yes, ma'am. Yes, ma'am, I apologize.

15 Q. And so the fraudulent activity would have been what in  
16 general were you referring to, sir?

17 A. The social securities, the fact that he was providing  
18 social security numbers to the employees.

19 Q. And did Mr. Reyes as outlined in Page 22 and 23 of the  
20 transcript adopt this statement as his own?

21 A. He did.

22 Q. But he admitted he didn't write it; correct?

23 A. Correct.

24 Q. And he didn't sign it; correct?

25 A. Correct.

1 Q. But he eventually adopted this; is that fair?

2 A. It is.

3 Q. So is that what you meant, that he submitted a document  
4 accusing Pablo of fraud?

5 A. I did.

6 Q. Were you aware that he didn't actually submit the document  
7 himself?

8 A. Correct.

9 Q. When you say "submitted the document," would it have been  
10 better to say "a document was submitted on his behalf"?

11 A. His behalf, yes, ma'am.

12 Q. Early on in your interview with Mr. Reyes, does he also  
13 say that, you know, he was afraid; he doesn't want any trouble  
14 because Mr. Montoya was murdered?

15 A. Yes, ma'am.

16 Q. In fact, that's on Page 15 of the transcript; is that  
17 correct?

18 A. Yes, ma'am.

19 Q. And in your affidavit, do you specifically say that his  
20 letter, this letter, his letter, that he had signed the letter?

21 A. Yes, ma'am.

22 Q. Have you had a chance to go back and review the affidavit  
23 and notice any typos?

24 A. I did, yes, ma'am.

25 Q. Specifically referring to Exhibit 7 -- they are numbered

1 at the bottom -- of Page 3 of 4 of the affidavit, excuse me,  
2 affidavit section of Exhibit 7, Page 3 of 4?

3 A. Yes, ma'am.

4 Q. Can you -- specifically Paragraph 6?

5 A. Yes, ma'am.

6 Q. Is there anything about that you notice there are typos  
7 in?

8 A. Yes, ma'am.

9 Q. Can you describe that for The Court, please?

10 A. The specific sentence is, "In the interview, Joel advised  
11 everything in his signed document to be true," and it should  
12 have been --

13 INTERPRETER GONZALES: Your Honor, the interpreter would  
14 like the witness to please slow down.

15 THE WITNESS: "In the interview, Joel advised everything  
16 written in his signed document to be true," and it should have  
17 read "Joel advised everything written in this signed document to  
18 be truthful."

19 Q. (By Ms. Groover) Okay. So you acknowledge that should  
20 not read "his signed document"?

21 A. Yes.

22 Q. Because he did specifically tell you he didn't sign it?

23 A. Yes.

24 Q. And he doesn't speak English?

25 A. Correct.

1 Q. Or read English?

2 A. Yes.

3 Q. So you agree that when the affidavit says he signed the  
4 document, that is a misstatement?

5 A. Correct.

6 Q. But in your -- does that change your analysis of the  
7 probable cause, sir?

8 A. No, ma'am.

9 Q. Why not?

10 A. Because the information on the actual document is, his --  
11 his words is exactly what happened.

12 Q. And at times, at the beginning of your interview, though,  
13 he does kind of deny having anything to do with this; is that  
14 fair?

15 A. Yes, ma'am.

16 Q. And that's referring back to Page 15 where he is saying he  
17 doesn't want any trouble; he's afraid of immigration?

18 A. Yes, ma'am.

19 Q. Why don't you disclose that information in the affidavit,  
20 that at first he was denying but then later on ultimately  
21 adopted the statement as his own?

22 A. I don't know. I don't know.

23 Q. Is it fair to say you were summarizing the ultimate end  
24 game of the interview, conclusions?

25 A. Correct.

1 Q. Do you agree it would have been better to include that  
2 information?

3 A. Yes, ma'am.

4 Q. Did you ever intentionally try to deceive the judge by not  
5 including that information?

6 A. No, ma'am. I didn't think that that was relevant. It's  
7 common during interviews that people change their stories. It  
8 starts off one thing. And then as more they open up and they  
9 feel more comfortable, then that's when the truth comes out.

10 Q. And did you feel that was the situation with Mr. Reyes?

11 A. Yes, ma'am, from -- I mean, even from when the interview  
12 begins with he talks about he's referring to he doesn't want the  
13 same thing to happen to him, so that right there lets me know  
14 he's very fearful to even be here talking to me, and we have to  
15 explain to him that this is between us. We explain that this is  
16 between us. We're not going to inform on him. We're not  
17 immigration. "We're not here to arrest you; we're here to solve  
18 a homicide."

19 Q. And the premise of that being Mr. Montoya was complaining  
20 and he was killed; is that correct?

21 A. Correct.

22 Q. So is it a reasonable fear for a witness to not want to  
23 get involved then?

24 A. Correct.

25 Q. So did that seem unusual to you or did that affect his

1 credibility to you because he was initially denying it?

2 A. No, ma'am. Not the slightest bit.

3 Q. There's another misstatement that, about the \$1500.00?

4 A. Yes, ma'am.

5 Q. You agree that Joel Reyes denied paying specifically  
6 \$1500.00 for the identities, if you will?

7 A. Correct.

8 Q. But did he nevertheless tell you that he was paying Pablo  
9 for the identity and the opportunity to work?

10 A. Correct.

11 Q. Describe for The Court what he told you.

12 A. That is where he -- and I broke it down because, again, I  
13 was having some miscommunications with him as far as the whole  
14 \$1500.00.

15 Q. Let me stop you for just a moment. For the record is this  
16 conversation, when you were having the miscommunication, is it  
17 outlined on Pages 10 and 11 and Page 16 and then 21 and 22 of  
18 Exhibit 6?

19 A. Correct.

20 Q. With those pages in mind, describe for The Court the  
21 communication you were initially having with Mr. Reyes about  
22 this payment structure.

23 A. At first, he said he -- he didn't pay for any, any money.  
24 He says that none of that happened. Again, that was early on in  
25 the interview and things changed. The more he felt more

1 comfortable, the more he began to open up to us.

2 And then I asked him specifically about the money  
3 exchanging. I don't know if he was having a hard time  
4 understanding me, so I asked him one way, and then I gave it to  
5 him what I would describe as a laymen's term. I asked him if  
6 you got paid this amount of money and this amount of money,  
7 well, how much would you get back, and that's when he broke it  
8 down. He said, "Well, if I worked 60 hours, I get paid \$600.00;  
9 if I work 80 hours, I get paid \$800.00."

10 I said, "What about overtime?"

11 He says, "There is no overtime; I got paid \$10.00 an hour  
12 no matter what it is."

13 Then I said, "Well, what did your paychecks look like?"

14 He said he did not get a paycheck. He said that they take  
15 their money, they would take their cut and they would give him  
16 the \$600.00, the \$800.00 in cash, so he would only receive cash.

17 Q. And did he explain who "they" was?

18 A. He paid Mr. Pablo Rangel.

19 Q. Okay. What did you understand that to be in context with  
20 his \$1500.00 that's outlined in the letter?

21 A. That he was paying for -- the money out of his checking  
22 account, out of his actual physical check. He didn't physically  
23 provide them with \$1500.00 in cash. It was coming out of his  
24 check.

25 Q. Okay, but he did, in fact, deny paying \$1500.00?

1 A. He denied giving him \$1500.00.

2 Q. Because he didn't?

3 A. Correct.

4 Q. Do you agree, well, it would have been better to explain  
5 that entire conversation in detail in the affidavit for the  
6 magistrate?

7 A. Thinking about it now, yes, ma'am, it would have been.

8 Q. And did you intend to deceive or lie at all to the  
9 magistrate by not explaining that or not putting that in there,  
10 that he denied paying \$1500.00?

11 A. No, ma'am.

12 Q. In your mind, did it change the fact that there was  
13 probable cause for these warrants?

14 A. No, ma'am.

15 Q. There's also information, Defendants claiming that you  
16 misrepresented that Joel Reyes had warned Montoya to leave Pablo  
17 alone since he was going to have him killed.

18 Do you recall reading that in the motion?

19 A. I did read that.

20 INTERPRETER DAVIS: Could you repeat that last question?

21 Q. (By Ms. Groover) You recall in the motion it says that  
22 you misrepresented that Reyes had warned Montoya to leave Pablo  
23 alone since he was going to have him killed?

24 A. Yes, ma'am.

25 Q. Do you recall that misrepresentation allegation?

1 A. Yes, ma'am, I do.

2 Q. Direct your attention to Page 15 and 16 in the transcript  
3 of Exhibit 6. Based on your interview with Mr. Reyes and  
4 directing your attention to Page 15 and 16, can you describe for  
5 The Court what Mr. Reyes told you about warning Mr. Montoya  
6 because he believed Pablo would have him killed?

7 A. I believe it's the last paragraph, "So this is where the  
8 problems stem from; I was told by the general, so at the end I  
9 was told by Eliud he had, Mister -- Mister -- do you want to  
10 send a letter; I told him I don't want trouble for you, for  
11 because he would tell me" -- it says "unintelligible" -- "that  
12 it was possibly they fired him and all that; I told him Mister,  
13 stop doing that because I know that there could be problems."

14 Q. Continuing to the next page, what -- did the conversation  
15 continue at?

16 A. I asked him, "Do you think that?" He says, "Because the  
17 Rangels are big; that family is big here."

18 I said, "The Rangels?"

19 He says, "The Rangels."

20 I said, "They are?"

21 His response was, "I mean, he has nephews and he has  
22 brothers and he has family in Texas also, I think."

23 "Who do you think killed him, could have killed him?"

24 "Maybe not the man because he looks -- he looks --"

25 I said, "Who, Pablo?"

1 His response is, "Yes, the heart one does not -- does not  
2 know in each person," and then it says -- where it says, I say  
3 "so" and then it says "voices overlap."

4 He responds, "But he could have sent somebody; it could  
5 have been -- I feel bad but what" --

6 And I said, "But whether he could kill someone it could be  
7 because" --

8 "Well, yes, yes, I feel bad."

9 "But do you know who could have been" and it says "voices  
10 overlap."

11 Q. So based on that conversation that's documented on Page 15  
12 and 16, what did you take that to mean?

13 A. Again, it was a summary that I felt that leave him alone  
14 because these are bad people.

15 Q. And that, did you take that to understand that Joel Reyes  
16 was explaining that Pablo would not kill him but would have  
17 someone do it?

18 A. Correct.

19 Q. And you pled in the affidavit you believe his family  
20 member?

21 A. Correct.

22 Q. But he doesn't specifically say family, does he?

23 A. No, but, again, we're talking, the way that I interpreted  
24 it was we were talking about the Rangels and then all of a  
25 sudden he discloses that statement. So it's -- I took it as he

1 was describing as the Rangel family.

2 Q. You understood it to be someone in his family?

3 A. Correct.

4 Q. And does he mentions, Joel Reyes mentions a nephew; is  
5 that correct?

6 A. Correct.

7 Q. And is Refugio a nephew?

8 A. He is, yes, ma'am.

9 Q. And Refugio was the individual who had the arrest in 2014  
10 for the .22-caliber firearm?

11 A. Yes, ma'am.

12 Q. Also in the affidavit, Defense highlights that with  
13 respect to referring to the EEOC complaint, you mentioned that  
14 there's a previous EEOC complaint. Are you aware of that  
15 portion in your affidavit?

16 A. I am, yes, ma'am.

17 Q. And can you tell The Court what you meant by "previous  
18 EEOC complaint"?

19 A. I guess in the early-on facts of the actual affidavit  
20 itself, I put in there the specific as to the EEOC complaint,  
21 and then later on the statement is it was the aforementioned,  
22 which should have been the previous-stated EEOC complaint.

23 Q. So when you used the word "previous EEOC complaint," were  
24 you referring to a separate complaint filed before the one that  
25 Mrs. Montoya handed you?

1 A. No, ma'am, I was referring to it, that sole one that was  
2 provided.

3 Q. You understand how that could be interpreted as a separate  
4 EEOC complaint?

5 A. Correct.

6 Q. Was it your intention to mislead the judge or trick the  
7 judge into thinking there are multiple EEOC complaints by using  
8 the word "previous"?

9 A. No. I see that, yes, ma'am.

10 Q. Defense has also highlighted some potential omissions in  
11 this affidavit, specifically that, you know, Mr. Reyes denied  
12 signing and denied writing the letter, which is Page 1 of  
13 Exhibit 12. Why did you leave that out?

14 A. It was, I guess, just a clerical error. That's where  
15 the "this" and the "his" were came into, it was "this document"  
16 and it was provided orally to the judge at the time.

17 Q. And with respect to as outlined on Page 22 and 23, do you  
18 feel that Mr. Reyes ultimately was adopting the statement?

19 A. Correct. He took it as -- as this was an agreement  
20 between myself and Mr. Eliud.

21 Q. And as you previously explained, Mr. Reyes did first kind  
22 of deny some things and you believed he was scared; is that  
23 correct?

24 A. Yes, ma'am.

25 Q. And, again, you left the fact that he was changing his

1 statement out in the affidavit. Why did you do that, sir?

2 A. Again, I didn't think that the relevance of it at the time  
3 was important. Again, in the first, the very first page of me  
4 talking to him, I mean, I asked him, his response to the first  
5 question I asked him is, "The problem is I don't want to talk  
6 too much or too little; right; how do you say this does not --  
7 does not affect me also."

8 He's basically say he doesn't want this to affect him as  
9 well. I said, "Yes" and then, "Do you know how it happened, if  
10 it was an assault that could have been done or depends, let's  
11 say, depending on the problem that could have happened at the  
12 company," so he's explaining to me that he's not -- he knows  
13 what -- what happened, and he doesn't want it to happen to him  
14 as well.

15 Q. Okay, and did you leave that out in an attempt to trick or  
16 deceive or be dishonest to the magistrate?

17 A. No, ma'am.

18 Q. And does it change your opinion with respect to probable  
19 cause about that Mr. Reyes initially denied and then kind of  
20 came around?

21 A. Absolutely not.

22 Q. At the time, did you see it as relevant?

23 A. No, not relevant at all.

24 Q. You also do not explain in the affidavit that Mr. Reyes  
25 could not read, read the letter because it was written in

1 English?

2 A. Correct.

3 Q. Why didn't you put that in the affidavit?

4 A. Again, I didn't think the relevance of it. I surmised it,  
5 his summary of him, from English to Spanish and he advised that  
6 that information was true and accurate as to what actually  
7 happened.

8 Q. And then ultimately adopting the statement as his own?

9 A. Correct.

10 Q. Did you not put the fact that Mr. Reyes didn't read or  
11 speak English in there to trick or to deceive or misstate on  
12 purposes for the judge?

13 A. No, ma'am.

14 Q. And did it affect your determination of probable cause or  
15 was it relevant to you at the time?

16 A. No, ma'am.

17 Q. Joel Reyes does tell you that he's never seen the Rangels  
18 with a gun; is that correct?

19 A. Correct.

20 Q. But you don't put that in the affidavit; correct?

21 A. Correct.

22 Q. Why did you not put that in the affidavit, sir?

23 A. Because we had a report that put Refugio with the firearm.  
24 We didn't think that the fact that they didn't have possession  
25 of firearms that he would have witnessed was relevant. He did

1 state that there could have been firearms in their house.

2 Q. Is that documented on Page 17 of Exhibit 6 of the  
3 transcript?

4 A. Page 17. Yes, ma'am.

5 Q. So he is -- he does not know if he has -- they have guns  
6 in their house; is that correct?

7 A. Correct, he doesn't know.

8 Q. You agree it would have been better to let The Court know  
9 that he did specifically say he's never seen them with a gun but  
10 may have them in their house?

11 A. Correct.

12 Q. Did you leave that out in an attempt to mislead or trick  
13 or deceive The Court in any way?

14 A. No, ma'am.

15 Q. Did it change your determination with respect to the  
16 probable cause, if he's never seen him with a gun?

17 A. No, ma'am.

18 Q. Why is that, sir?

19 A. Again, because we saw Refugio, we had a report documenting  
20 his nephew, who he is -- was informed lives in the same compound  
21 with him, had been arrested in possession of a .22-caliber  
22 handgun.

23 Q. Now specifically with respect to that arrest, you did  
24 leave out that Refugio, when he got arrested with that .22-  
25 caliber gun, it was seized and it was seized at the time of the

1 arrest?

2 A. Correct.

3 Q. Did you at the time when you were writing your affidavit  
4 and were providing it to The Court, did you have any idea where  
5 that gun was?

6 A. No, ma'am.

7 Q. Can you describe the process in Garden City when someone  
8 is arrested and a firearm is seized for The Court?

9 A. Any firearm that is seized subsequent to an arrest has to  
10 be run through Etrace, which is -- it's monitored by the ATF.  
11 It's all gun purchases are kept in a file based on serial  
12 number. We send the Etrace and we get -- we get the individual  
13 who purchased the firearm's information.

14 We then call that individual and let them know their  
15 firearm was seized subsequent to an investigation and they are  
16 more than welcome to come pick up their firearm.

17 If we can't get ahold of somebody to come pick up the  
18 firearm and that is put on paper, after a significant amount of  
19 time, the gun is either put in for destruction order or a  
20 judge's signature is authorized to auction the firearms.

21 Q. So you don't keep it in evidence in Garden City forever  
22 and forever?

23 A. No, ma'am. We don't like to keep things in evidence if we  
24 don't have to.

25 Q. You either return it somehow or it gets disposed of?

1 A. Correct.

2 Q. So were you familiar with what the Savannah Police  
3 Department's procedures were when they seized firearm?

4 A. I believe it was the same as ours. We normally adopt  
5 things from them.

6 Q. And so the fact that a weapon was seized in 2014 and then  
7 you're looking at 2017 incident, did you have any idea at that  
8 time that the gun would still be property in evidence?

9 A. No, ma'am.

10 Q. Did you ever have the opportunity over the weekend to pick  
11 up a phone and even find out where the gun was?

12 A. I don't believe Savannah Property works on weekends so we  
13 wouldn't have got any information on the weekends anyways.

14 Q. Did you leave out the fact that the gun was seized in the  
15 affidavit in a way to deceive or trick or mislead the magistrate  
16 in any way?

17 A. No, ma'am.

18 Q. And, in fact, why did you put that in the affidavit that  
19 Refugio was arrested with a .22-caliber firearm? What was the  
20 purpose of that in your mind?

21 A. That he is an illegal alien in possession of a firearm; he  
22 has access to guns.

23 Q. And that's relevant to the probable cause with respect to  
24 family members living on the property with access to guns?

25 A. Correct. Small-caliber guns on top of that.

1 Q. Would it have changed your determination of probable cause  
2 if you knew, even though you didn't, if you knew the gun was  
3 still in property in evidence at the time?

4 A. No, ma'am.

5 MS. GROOVER: May I have just a moment, Your Honor?

6 THE COURT: You may.

7 Q. (By Ms. Groover) Just briefly, Your Honor, referring back  
8 to Exhibit 12, Page 1, or the letter that Mr. Montoya had, it  
9 explained that he was terminated or suspended?

10 A. The letter, I believe it says he was suspended.

11 Q. And did you previously say that he was terminated?

12 A. I believe -- not Mr. Montoya. Joel Reyes was terminated.

13 Q. Okay.

14 A. Mr. Montoya was suspended for three days.

15 Q. And did you put any of that information in your affidavit?

16 A. The fact he was suspended is in the affidavit, yes, ma'am.

17 MS. GROOVER: Okay, thank you.

18 No further questions, Your Honor.

19 THE COURT: Mr. Ertel, cross-examination.

20 CROSS-EXAMINATION

21 BY MR. ERTEL:

22 Q. Thank you, Your Honor.

23 Detective or Sergeant?

24 A. Detective Sergeant.

25 Q. Detective Sergeant Rodriguez, you testified that you gave,

1 I believe you said, oral testimony to the magistrate on, I  
2 guess, it's August 20th, 2017; correct?

3 A. Yes, sir.

4 Q. But -- and that testimony, that oral testimony, was  
5 only -- well, other than testimony about how you obtained the  
6 Google Maps and the location of the residence, you told the  
7 magistrate nothing other than what's in the four corners of the  
8 affidavit?

9 A. As far as -- I did provide more information, yes, sir.

10 Q. Do you remember testifying in front of Judge Smith in  
11 another suppression hearing for Hipolito Martinez?

12 A. Years ago, yes, sir. I don't know the specific date.

13 MR. ERTEL: If I may approach, Your Honor.

14 THE COURT: You may.

15 Q. (By Mr. Ertel) I'm going to give you your own copy of  
16 Defense Exhibit Number 5. I think you have a copy of it.

17 A. Thank you, sir.

18 Q. And I will turn your attention particularly to Page 33.  
19 Take a look at the beginning and make sure that is your  
20 testimony from the -- from that hearing?

21 A. Yes, sir.

22 Q. And if you look on Page 33, Line 3. You will see The  
23 Court asks you, "Did the term 275 Milton Rahn Road ever come up  
24 about any issues -- well, are there any other addresses there,"  
25 well, I'm sorry. Here, I'm sorry, Line 9.

1 Ms. Groover asked you, "Was there any other additional  
2 testimony that you provided to the magistrate that is not in the  
3 warrant," and your answer was?

4 A. "No, ma'am."

5 Q. So there was no other information provided to the  
6 magistrate other than what's in the affidavit?

7 A. I would have to review, but I believe on that specific  
8 question was asking specific to the address. I'm not sure if it  
9 was as far as the actual narrative itself. So I have to review  
10 the --

11 Q. Go ahead and review it.

12 A. Okay. Yes, sir, on Page 31 Line Number 9, "In the course  
13 of reading of the affidavit, she asked" -- "In the course of  
14 reading of the affidavit, she asked you questions and you  
15 started volunteering information; she asked me, before she swore  
16 me in, she asked me if I had oral testimony and at that point  
17 she said she had to swear me in; that's when I advised her the  
18 search warrant, I gave her the circumstances surrounding the  
19 search warrant as well as the verbiage in the search warrant  
20 prior to her reading it."

21 Q. Okay. So only the information in the search warrant?

22 A. Circumstances surrounding the search warrant, which I  
23 provided her, I gave her brief facts, the summary of the  
24 investigation from A to Z.

25 Q. Okay. So...

1 A. That is on Page 31.

2 Q. I see that, and you will see on Page 32, The Court, "What  
3 exactly -- and you may have already brought this out, what was  
4 exactly told to the magistrate that's not in this affidavit,"  
5 and Ms. Groover asked you a series of questions and at the end  
6 of those series of questions, on Page 33, "Was there any other  
7 additional testimony that you provided to the magistrate that is  
8 not in the warrant"?

9 A. Correct.

10 Q. "No, ma'am"?

11 A. Again, on Page 32, it's -- it's -- we're talking about the  
12 residence, I believe, and we're talking about the scope itself  
13 because again, "with the matching," "yes, ma'am," "was the  
14 description that was on the warrant" --

15 INTERPRETER DAVIS: The interpreter needs you to slow  
16 down reading. Thank you, please.

17 THE WITNESS: "And that description that was on the  
18 warrant came from other law enforcement officers; yes, ma'am;  
19 and that it was your intention to search every single trailer,  
20 camper, home, dwelling on the property; yes, ma'am; which is why  
21 the description says multiple dwellings, yes, ma'am."

22 Q. (By Mr. Ertel) Take me -- I'm sorry.

23 A. "You further explained and you described these trailers,  
24 campers, dwellings to the best you could from other officers'  
25 observations; yes, ma'am; but notwithstanding the limited

1 description, it was your intention that this was told to you,  
2 the magistrate, under oath, that you were seeking a warrant to  
3 search all the dwellings; yes, ma'am; did the term 275 Milton  
4 Rahn Road come up with any issue about, well, are there other  
5 addresses there; did that come up during your discussion with  
6 the judge; I don't recall; all right, was there any additional  
7 testimony that you provided the magistrate that's not in the  
8 warrant." I took that specific as to the actual scope itself  
9 because that was where the question came from.

10 Q. Let's look back to the page before and look at the judge's  
11 specific question, starts on Line 5 of Page 32. "What  
12 exactly -- and you may have already brought this out -- what was  
13 exactly told to the magistrate that is not in this affidavit,"  
14 and then Ms. Groover asks you a series of questions and at the  
15 end of those questions, she asked, "Was there any other  
16 additional testimony you provided to the magistrate that is not  
17 in the warrant; no, ma'am." Correct?

18 A. Correct, correct.

19 Q. Now, you'll agree with me that your opinion as to whether  
20 there is probable cause is really of no merit here?

21 A. Irrelevant.

22 Q. It's what the magistrate did?

23 A. Yes.

24 Q. So whether you thought you had probable cause without  
25 Refugio's information, is immaterial to this; right?

1 A. Correct.

2 Q. Let's talk about Refugio for a moment. You've been in law  
3 enforcement since 2009; correct?

4 A. Sworn since 2010, so about 11 years.

5 Q. You're aware that when evidence is seized, being a  
6 detective and a law enforcement officer, when evidence or items  
7 are seized that are in evidence that they stay in evidence until  
8 they are no longer needed; right?

9 A. No, sir.

10 Q. So if they were going to prosecute Refugio Ramirez for  
11 possessing a weapon, they are going to have a weapon?

12 A. The weapon or photographs themselves, one or the other.

13 Q. And you're aware I believe you testified in another matter  
14 that Refugio also had warrants for his arrest?

15 A. He did.

16 Q. And you're aware that one of those warrants was for  
17 failure to appear?

18 A. I -- I believe, yes, sir.

19 Q. And that failure to appear was for the possession of a  
20 weapon?

21 A. Yes, sir.

22 MR. ERTEL: Your Honor, I'm sorry, I don't have a lot of  
23 copies of these. I've just got these and Judge, I would mark  
24 that as Defendants' Exhibit Number 9.

25 THE COURT: Before you move to that one, Mr. Ertel, I

1 think the transcript in the previous proceeding, you addressed  
2 it but I don't think it was ever tendered or admitted --

3 MR. ERTEL: I was going to ask you to take judicial  
4 notice of it or we can make it as an exhibit, and I have it as  
5 Defendants' Exhibit Number 5, I believe.

6 THE COURT: Any objection?

7 MS. GROOVER: No, Your Honor.

8 THE COURT: It's admitted. I will also note for the  
9 record that that is in Case Number 4:17-CR-217, Document Number  
10 49, on the electronic docket, a copy of that transcript as well.

11 MR. ERTEL: If I may approach.

12 THE COURT: You may.

13 Q. (By Mr. Ertel) Let me show you what I've marked as  
14 Defendants' Exhibit Number 9, and take a look at that and see  
15 if that confirms that Refugio had the failure to appear for  
16 this carrying a concealed weapon?

17 A. He did.

18 MR. ERTEL: Move for admission of Defendants' Exhibit  
19 Number 9.

20 MS. GROOVER: No objection. I would note it has  
21 personally identifying information so perhaps seal it or redact  
22 portions of it.

23 THE COURT: Any objection to that going in under seal,  
24 Mr. Ertel?

25 MR. ERTEL: No, that's fine.

1 THE COURT: It will be admitted under seal and that is  
2 Defendants' Exhibit Number 9. And I will just caution anyone  
3 from discussing any of the personally identifiable information.

4 MR. ERTEL: We won't be discussing it.

5 THE COURT: Do you have an additional copy of that, sir?

6 MR. ERTEL: I don't. I can give you the original of  
7 that, Judge.

8 THE COURT: Ms. Mixon, can you please --

9 Q. (By Mr. Ertel) Let's talk a little bit about the day  
10 before or the 17th. That was the other homicide?

11 A. Yes, sir.

12 Q. Did you say that Detective Reyes was the secondary?

13 A. He -- he was primary. He was primary, so I was going to  
14 guide him through working and solving a homicide.

15 Q. And I may have gotten this -- so just clarify it for me.  
16 What was Detective White -- was it Detective White, what was his  
17 role in the first homicide, the 17th?

18 A. So because of his -- he's a pastor. We called him in  
19 there as a -- just another detective, but he can also do the  
20 next-of-kin notification. He would be able -- he's more -- he  
21 was probably the most qualified to handle that.

22 Q. And the August 17th homicide, were you the affiant on the  
23 search warrant in those search warrants?

24 A. I don't recall. I don't recall.

25 Q. So if you are not the affiant, it would probably be

1 Detective Reyes who was preparing those?

2 A. It would be one of us two, yes, sir.

3 Q. You talked about when you got to the -- let me shift gears  
4 now to August 19th?

5 A. Yes, sir.

6 Q. On Old Dean Forest Road?

7 A. Yes.

8 Q. You got to the scene. You began working as a crime scene  
9 tech?

10 A. Correct, I was.

11 Q. You were processing the crime scene, and then  
12 information -- you used the term "facts"?

13 THE COURT: One moment, the defendant is having trouble  
14 hearing through the headset.

15 INTERPRETER DAVIS: I beg your pardon, Your Honor. It  
16 appears to be this unit that's causing trouble so we will try to  
17 do it with just one unit for the rest of the hearing.

18 THE COURT: It appears to be working. Go ahead, Mr.  
19 Ertel.

20 Q. (By Mr. Ertel) Thank you.

21 On direct, you said, as you were processing the crime  
22 scene you got some facts, and I think you called them  
23 accusatory facts?

24 A. Correct.

25 Q. And that caused you to shift roles?

1 A. Correct.

2 Q. And the accusatory facts came from, I believe you said,  
3 Mr. Montoya's sister, her mother or his mother, I'm sorry, or  
4 his wife or was it just those two at the time?

5 A. So it ended up being four individuals. It was Mr.  
6 Montoya, his wife, his sister, his mother and then the fourth  
7 young lady who referred to herself as Puerto Rican.

8 Q. Carmen Brown?

9 A. Carmen Brown.

10 Q. And those accusatory facts, you said that they speculated  
11 as to who did the killing?

12 A. As to -- as to I guess more of the why. Why.

13 Q. They speculated as to why?

14 A. The reason. Correct.

15 Q. And they speculated that it was Pablo?

16 A. Correct.

17 Q. But they weren't there?

18 A. Correct.

19 Q. They didn't see it?

20 A. Correct.

21 Q. Nobody told them that?

22 A. Correct.

23 Q. So you would agree with me speculation is not fact?

24 A. Correct, my apologies.

25 Q. So you also testified that they provided you documents;

1 correct?

2 A. Yes, sir. Yes, sir.

3 Q. And I think that -- is that Exhibit 12?

4 A. Yes, sir.

5 Q. And you said that it says that there were illegals working  
6 there?

7 A. Correct.

8 Q. And that they were being paid less than minimum wage?

9 Those are your words from direct.

10 Can you take a look on there and see if it says on there  
11 anywhere that they were being paid less than minimum wage?

12 A. It's not on Mr. Reyes' form.

13 Q. Pardon me?

14 A. It's not on Mr. Reyes' form.

15 Q. No doubt they were not getting paid their full wages but  
16 there's nowhere on this -- any of those --

17 A. Correct.

18 Q. But it's nowhere it says less than minimum wage?

19 A. Correct.

20 Q. In cases like this, you agree with me that wording and the  
21 context is critical when you're giving affidavits to judges to  
22 determine if you are going to be able to go into somebody's  
23 house and search?

24 A. I don't think that that was actually spoken of in my  
25 affidavit.

1 Q. No, I know. But I'm just saying you would agree that  
2 words are important and being precise?

3 A. Correct.

4 Q. I think you testified on direct that you were aware that  
5 Refugio Ramirez was an undocumented alien?

6 A. I believe so, yes, sir.

7 Q. And you're aware that, of course, federal law would  
8 prohibit Garden City Police Department from releasing a weapon  
9 to an undocumented alien?

10 A. Correct.

11 Q. Okay.

12 A. Yes, sir.

13 Q. So even if that gun was released by Garden City, it was  
14 not released back to Refugio?

15 A. It would have been released back to the owner or the  
16 owner's representative.

17 Q. Are you aware now that the gun that was seized from  
18 Refugio Ramirez in 2014 is still in the possession of Chatham  
19 County Police Department?

20 A. No, sir.

21 Q. I don't know if you have a copy of it. This is a  
22 stipulation between the Government and the Defense. And if we  
23 can admit it into evidence and I can read it for The Court.

24 Well, "United States of America by David Estes, Acting  
25 United States Attorney, and Tania Groover and Christopher

1 Howard, Assistant United States Attorneys for the Southern  
2 District of Georgia, jointly with Defendant Pablo Rangel-Rubio,  
3 Jeff Ertel, J. Wes Bryant and W. Dow Bonds, counsel for Mr.  
4 Rangel-Rubio, hereby agree and stipulate to the following facts,  
5 which may be entered into the record as if proven by competent  
6 evidence without further proof being offered. December 23rd,  
7 2014, officers from Savannah Police Department arrested Refugio  
8 Ramirez" --

9 INTERPRETER DAVIS: I'm sorry, the interpreter --

10 Q. (By Mr. Ertel) I'm sorry. "Arrested Refugio Ramirez. At  
11 the time of the arrest the officers found a listed -- a firearm  
12 listed as a Davis Industries, Inc. DM pistol derringer .22,  
13 Serial Number 244582, and ammunition. The firearm and  
14 ammunition were logged into the property room as evidence at the  
15 Savannah Police Department. As of June 9th, 2021 the Davis  
16 Industries DM pistol derringer .22 Serial Number 244582 remains  
17 in the custody of the Savannah Police Department. So stipulated  
18 and agreed," and signed by Mr. Howard, Ms. Groover, myself and  
19 Mr. Bonds, so are you now aware that the pistol --

20 THE COURT: Let me make note the copy that I have is not  
21 signed.

22 MR. ERTEL: The original is.

23 THE COURT: I've got a signed copy --

24 MR. ERTEL: Judge, this is the signed copy, the original  
25 signed, so move that, Defendants' Exhibit 6 into evidence.

1 THE COURT: Any objection, Ms. Groover?

2 MS. GROOVER: No, Your Honor.

3 Q. (By Mr. Ertel) So you're aware that the gun is still in  
4 the possession of Savannah Police Department?

5 A. Yes, sir.

6 Q. So let me talk about when Mr. Reyes came to Garden City  
7 Police Department. That was -- I'm not going to hold you to the  
8 exact -- sometime between six and seven o'clock at night on 19th  
9 of August 2017. He was put in an interview room?

10 A. He was.

11 Q. And is that automatically recorded?

12 A. It does not. You have to manually turn it on.

13 Q. But you or somebody turned it on in this case?

14 A. Yes, sir.

15 Q. And we know it was recorded because the Government has  
16 introduced it as evidence. You had access to that recording  
17 immediately after the interview? You could go review it?

18 A. Yes, sir, we could have.

19 Q. As a matter of fact, I think you did for some parts of  
20 preparing your affidavit?

21 A. I don't recall reviewing the actual video itself  
22 afterwards. I don't recall.

23 Q. Yeah.

24 A. I know we definitely took notes and it's customary to  
25 review. I just don't recall at this time.

1 Q. See if -- take a look at Defendants' Exhibit Number 5 on  
2 Page 26 at the bottom and see if that may refresh your  
3 recollection as to whether you may have gone back to review --  
4 as a matter of fact I think it's the last, starting at Line 21.

5 In particular, I guess there's some verbiage change and I  
6 think it has to do with the address to be -- to be fair, in the  
7 warrant, and you say at least on Paragraph 24, "but the more I  
8 read into the interview with Joel and then the interview I did  
9 with Effingham." Is that indicating you went back and reviewed  
10 the tape of the interview?

11 A. Again, I don't recall.

12 Q. You don't recall?

13 A. It's customary, especially with two of us being in there,  
14 we take notes, so it could have been I reviewed the note-taking  
15 that we took or the video evidence. I don't remember.

16 Q. But whether you did or didn't, you had the opportunity?

17 A. We did, yes.

18 Q. So you could have gone back to find out exactly what Joel  
19 Reyes said?

20 A. Yes.

21 Q. And instead of inferring things or interpreting them, you  
22 could have been -- you could have reported with 100 percent  
23 accuracy what Joel Reyes said; correct?

24 A. Could have, yes, sir.

25 Q. And I think you've admitted this, I think, but I'm going

1 to go over back over it.

2 In your affidavit, search warrant affidavit, you say that  
3 Mr. Reyes says everything in his signed statement was true,  
4 okay, and now I believe you said that "his" should be "this"?

5 A. Yes.

6 Q. But "everything in his" or "this signed statement" wasn't  
7 true; right?

8 A. Well, it was true, yes, sir.

9 Q. He never -- he said "I never paid him \$1500.00"?

10 A. He didn't ever physically pay him \$1500.00, but the  
11 money -- he still paid him the money. It was not physically  
12 \$1500.00 given to him. It was \$1500.00 given to him from the  
13 back end of his check.

14 Q. And that's your reconciliation of the discrepancy. That's  
15 how you reconciled the discrepancy between what he told you and  
16 what actually happened?

17 A. At the time, yes, sir. At the time.

18 Q. And just to be clear, the allegations are that Pablo  
19 underpaid everybody, all of the illegals?

20 A. All the illegal aliens, yes.

21 Q. And he paid them all a hundred dollars a day?

22 A. I don't know about a day.

23 Q. I think -- well --

24 A. He paid them \$10.00 a day for whatever hours they worked.

25 Q. Ten --

1 A. \$10.00 an hour for whatever specific hours they worked.

2 Q. So he paid them all \$10.00 an hour?

3 A. Not -- not specific, Joel said I guess, in the interview I  
4 believe he said some people did make more than other people but  
5 he made \$10.00 an hour.

6 Q. To the -- not to the degree of how much but he -- the  
7 allegations are that Pablo underpaid all of the undocumented  
8 workers?

9 A. Correct.

10 Q. Not that each of those and that -- strike that. And he  
11 underpaid them from the beginning to the end?

12 A. I don't -- I don't believe so. I believe that -- again,  
13 if we're just referring to the search warrant itself, then yes,  
14 that is correct.

15 Q. So the interview lasted approximately an hour. So I would  
16 say, given seven o'clock, it's over by eight o'clock. You met  
17 the magistrate at 11 o'clock the next day so everything Mr.  
18 Reyes had told you was still pretty fresh in your mind?

19 A. Correct.

20 Q. You would admit that -- well, you wouldn't. You would  
21 agree with me that at the time you wrote your affidavit the only  
22 person who gave you firsthand knowledge about any illegal  
23 activity at all concerning Mr. Rangel-Rubio was Joel Reyes?

24 A. And Eliud's statement in his notebook with the --

25 Q. The only person who --

1 A. Verbalized it to me?

2 Q. The only person that gave you firsthand knowledge?

3 A. At that point would have been Joel Reyes.

4 Q. And you referenced the, whether it's "this signed  
5 statement" or "his," in your affidavit for the search warrant;  
6 right?

7 A. Correct.

8 Q. And you didn't tell the magistrate that he at first  
9 disavowed it; correct?

10 A. Correct.

11 Q. And you didn't tell the magistrate that he said "I never  
12 signed it"?

13 A. Correct.

14 Q. And he never came off the fact that he never signed it?

15 A. Never came off it.

16 Q. He also never came off the fact that he didn't write that?

17 A. Correct, he never came off that.

18 Q. He never came off the fact that "I can't even read that; I  
19 don't read English"?

20 A. Correct.

21 Q. But you didn't tell the magistrate those facts about the  
22 only person who gave you firsthand knowledge of illegal  
23 activity?

24 A. Correct. I told her that his statement was that  
25 everything written in this document to be true.

1 Q. With the exception of -- oh, you didn't tell her that  
2 either; that's right.

3 You talked about Mr. Reyes, that he was fearful. Did you  
4 ever ask him if he was fearful?

5 A. I don't recall if I specifically asked him during the  
6 interview. I don't remember.

7 Q. So from what he told you, you inferred that he was  
8 fearful?

9 A. And from his manifestations, his demeanor.

10 Q. But he didn't say "I'm afraid I'm going to get killed; I'm  
11 afraid somebody is going to kill me"?

12 A. Again, it was just a statement he made that, to me, was a  
13 little damning.

14 Q. He never said "I'm afraid they are going to kill me"?

15 A. He never --

16 Q. "I'm afraid they are going to harm me"?

17 A. He never used those specific words, no, sir.

18 Q. And you said he eventually adopted the statement as his  
19 own?

20 A. Correct.

21 Q. And Ms. Groover, I think, referred us to Pages 22 and 23.  
22 I think, where does he adopt it? His statement? Where --

23 A. It's on Page -- on Page, the very bottom of 22 into 23, I  
24 can read it out loud.

25 Q. Go ahead. Please read it --

1 A. "So like right now there are," it says "pause, letter that  
2 supposedly were signed for the company; I mean, there were  
3 people who signed. In fact, my -- my -- he also asked for  
4 mine."

5 THE COURT: Detective, when you're reading I'm going to  
6 ask you to slow down.

7 THE WITNESS: My apologies, Judge.

8 THE COURT: If you will start over, please.

9 THE WITNESS: "So like right now there are letter  
10 (pause) letter that supposedly were signed for the company. I  
11 mean, there were people who signed, in fact, my -- my -- my, he  
12 also asked for mine; I did not send a letter; someone signed it  
13 but um, yes, it was suddenly an agreement between us."

14 Q. (By Mr. Ertel) You didn't move to clarify that?

15 A. No, sir.

16 Q. You just inferred that, "yes, there was suddenly agreement  
17 between us" was him adopting the statement?

18 A. Correct.

19 Q. Did you tell the magistrate that you inferred that he said  
20 "adopted the statement" and said everything was true?

21 A. I don't recall I said -- because I believe I asked him at  
22 another time if everything written in this statement was true  
23 and he said yes.

24 Q. Did you tell the magistrate at any time that you were  
25 drawing inferences from what Mr. Reyes had told you?

1 A. I wouldn't use "inferences" as to what I was gathering. I  
2 was gathering --

3 Q. Let's talk about the \$1500.00.

4 A. Okay.

5 Q. He said he didn't pay him \$1500.00. You inferred that he  
6 was making -- the \$1500.00 came from other sources?

7 A. That was my interpretation. That's the way I interpreted  
8 it.

9 Q. "Interpretation," I will use the term "interpretation."  
10 That was your interpretation of what he said. He didn't  
11 actually say it; you interpreted it?

12 A. Correct.

13 Q. So like these people do exact interpretations. Your  
14 interpretation wasn't exact?

15 A. Between two Spanish speakers in that room, we both  
16 interpreted the same thing.

17 Q. They interpret things exactly. Did you interpret things  
18 exactly for the magistrate?

19 A. At that time, what I -- what I was assessing, yes, that  
20 was I gathered.

21 Q. I'm not saying what you were assessing. Did you interpret  
22 exactly what was said?

23 A. Yes, that the money came out of --

24 Q. Where does he say he paid Pablo \$1500.00 for  
25 identification?

1 A. On his sworn statement, he said the money came out of the  
2 \$1500.00. Again, he didn't write the letter.

3 Q. Where did he say in his interview, 45-minute to an hour  
4 interview, that he paid Pablo \$1500.00 for identification?

5 A. It was not -- it was not the specific dollar amount. It  
6 was more of the money came out of his paycheck.

7 Q. Where did he say "I told him that Pablo was going to have  
8 him killed"? Where in his statement does he say that?

9 A. I don't know if the word "killed" was specifically  
10 mentioned. I can't find it, sir. What was the question again?

11 Q. Where does he say -- let's use your words from Exhibit 7,  
12 where you say in your affidavit, "your affiant asked if Joel was  
13 surprised Eliud was dead; Joel advised he was not; he stated he  
14 told Eliud to leave Pablo" --

15 INTERPRETER GONZALES: Could you --

16 Q. (By Mr. Ertel) I will start over.

17 "Your affiant asked Joel if he was surprised Eliud was  
18 dead; Joel advised he was not; he stated he told Eliud to leave  
19 Pablo alone since he was going to have him killed."

20 Where does he say that in his interview?

21 A. I don't see it, sir.

22 Q. Pardon me?

23 A. I don't see it.

24 Q. Because he didn't say that; right?

25 A. I can't find it in the transcript, no, sir.

1 Q. You may have inferred that's what he meant but he never  
2 said it; correct?

3 A. Maybe. I can't find it in my paperwork.

4 Q. Okay. On direct, you talked a little bit about reports of  
5 multiple gunshots near the property?

6 A. Gun discharges.

7 Q. Discharges, thank you. Did you pull any reports to  
8 confirm that?

9 A. I did not know. Those are not -- those are Effingham  
10 County and I don't know what -- I don't believe they do  
11 documentation for gun discharge.

12 Q. Pardon me?

13 A. I don't know if Effingham County does reports for gun  
14 discharges in the area.

15 Q. Would it surprise you, when we requested any information  
16 about reports for that property, there were none?

17 A. Again, I don't know if they annotate reports for gun  
18 discharge. Some agencies do. Some agencies don't, and that  
19 information came specific from Timmy Dickey from the Effingham  
20 County Sheriff's Department.

21 Q. Okay. We talked a little bit about the fact that Mr.  
22 Reyes had at first denied any involvement, then or denied the  
23 letter, I'm sorry, not denied involvement, denied the letter and  
24 then gradually changed over time and you said it was common for  
25 people to change their stories?

1 A. Yes, sir.

2 Q. And you determined that it wasn't important to tell the  
3 magistrate that he changed his story over time because people  
4 often do it?

5 A. It's typical, yes, sir.

6 Q. So I think Ms. Groover asked you and I believe it's at the  
7 bottom of 22 and onto Page 23 -- no, that's not it. Let me find  
8 it.

9 Part of the reason that you thought that Mr. or you talk  
10 about the problems that Mr. Reyes was talking about were that he  
11 could be killed or somebody could be killed -- strike that.  
12 Never mind. I won't ask that question.

13 Just cleaning up a moment, Judge. Almost done, I think.

14 I think we talked about you saying in Government Exhibit 7  
15 that Mr. Reyes said that Pablo may have family that could kill  
16 somebody?

17 A. Correct.

18 Q. And you say he doesn't -- I think you said he doesn't  
19 really say "family." That's the way you interpreted it?

20 A. We were talking about the Rangels and then we went to a  
21 specific question, and when he says he could have sent somebody  
22 so we're talking about the Rangels and he specifically answers  
23 "He could have sent somebody."

24 Q. But he didn't say family. He didn't say he could have  
25 sent -- somebody in his family could have done it. As a matter

1 of fact, I think you say, "That's the way I interpreted it"?

2 A. That's the way I interpreted it.

3 Q. But you didn't tell the magistrate that you were  
4 interpreting things that he said?

5 A. No, sir.

6 Q. You represented that that's what he said?

7 A. Correct.

8 Q. In your search warrant affidavit, you said "I believe the  
9 victims are shot -- the victim was shot three times" as you knew  
10 on --

11 A. Preliminary.

12 Q. We know later it was five or six?

13 A. I don't know the specifics. I just know at the time it  
14 was not as much as we -- the number was significantly less than  
15 we anticipated.

16 Q. And the derringer that was seized from Refugio in 2014,  
17 you know that derringers are commonly one- or two-shot guns?

18 A. I'm not -- I'm not a gun enthusiast. I don't know the  
19 specifics about how many guns, how many rounds a firearm would  
20 hold or not.

21 Q. And to be clear, the gun that was seized from Refugio in  
22 2014 that you knew either was still in the custody of Chatham  
23 County, destroyed or returned to someone other than him; those  
24 are the only three options?

25 A. To the owner or agent of Mr. --

1 Q. So you knew or had reason to believe Refugio didn't have  
2 that gun?

3 A. No, I did not. It could reasonably be he could have had  
4 that gun if it was out -- if it was on the streets, it's a good  
5 chance he could because the gun was never reported stolen, so he  
6 took possession of that firearm some way or another.

7 Q. But we have already agreed it would have been illegal to  
8 return that gun to him because he's an undocumented alien?

9 A. We as law enforcement could not give it back to him;  
10 however, that firearm was never reported into the database as  
11 stolen so some way he legally obtained that firearm which one  
12 could speculate was given to him by the purchaser. It was not  
13 taken by -- it was not entered as a stolen gun, so the way that  
14 I interpreted it is if one person is in possession of a gun that  
15 is not stolen, there's a good possibility that gun was legally  
16 given to him and could easily be given to him as well.

17 Q. I think we may have covered this, but just out of an  
18 abundance of caution, you asked him: "Have you ever seen Pablo  
19 with a gun"?

20 A. That was specifically asked.

21 Q. And he told you no and Mr. Reyes had worked with Pablo for  
22 a number of years?

23 A. Yes. I believe he worked for three years.

24 Q. He also worked for Pablo's relatives who also were working  
25 for the tree company?

1 A. Some of them. He did have a substantial amount of  
2 relatives who worked for the company.

3 Q. You also asked him if he had ever seen any of Pablo's  
4 family with a gun?

5 A. On their person, yes.

6 Q. And he said he had not?

7 A. He did not.

8 Q. And you never told that to the magistrate?

9 A. No, because we had his nephew in possession of a firearm.

10 Q. In 2014?

11 A. Three years prior, yes, sir.

12 Q. But you decided not to tell the magistrate that Mr. Reyes,  
13 who worked with the Rangels for a number of years, had never  
14 seen them with guns? You made that decision?

15 A. It was deemed that it was not relevant.

16 Q. You deemed it was not relevant?

17 A. Correct.

18 Q. And we've already determined that the person that the  
19 relevancy goes to is the magistrate?

20 A. Correct. The way that means, Refugio, who was also an  
21 employee of the business who had been in possession of a firearm  
22 prior and he had never seen him with one, but yet he had been  
23 arrested with one.

24 Q. At the time you filled out your affidavit and the time you  
25 met with the magistrate, you had not yet contacted Ruben

1 Ramirez?

2 A. Yes, we had. We had attempted to get in contact --

3 Q. No, actually made contact.

4 A. No, we had not. We were unable to get in contact with  
5 either one of these individuals.

6 Q. So you did not have -- but you already knew that Mr.  
7 Reyes' statement was not his statement; it was authored by  
8 somebody else?

9 A. It was his statement but he did not write it.

10 Q. It was authored by somebody else?

11 A. Correct.

12 Q. It was signed by somebody else?

13 A. Correct.

14 Q. So you couldn't verify at the time you met with the  
15 magistrate, by the time you met with the magistrate on August  
16 20th of 2017, you did not confirm if Ruben Ramirez had written  
17 that statement?

18 A. Ruben, no. The only information I had was that Mr. Joel  
19 advised he came to an agreement about this statement --

20 INTERPRETER GONZALES: Interpreter requests could the  
21 witness please slow down.

22 THE WITNESS: He agreed about the agreement on his  
23 statement and then he also provided, I guess, some of the  
24 relevant facts as far as Ruben Ramirez's statement goes, so I  
25 guess it assisted in, I mean, the validity of it.

1 Q. (By Mr. Ertel) So they all worked together?

2 A. Correct.

3 Q. And he's likely to know when Ruben Ramirez was injured?

4 A. Correct.

5 Q. And they all talk?

6 A. Correct.

7 Q. So he's going to know of that?

8 A. But he won't -- but I don't think he would have known the  
9 relevant facts that were in his statement.

10 Q. You don't think?

11 A. One way -- correct.

12 Q. But you still at that time hadn't verified --

13 A. We were unable to get in contact with either one.

14 Q. Neither one?

15 A. We attempted to, but we were unable to.

16 MR. ERTEL: For the purposes of being complete, I'm just  
17 going to, I'd like to introduce, if I may approach, Your Honor.

18 THE COURT: You may.

19 Q. (By Mr. Ertel) Let me show you what's been marked as  
20 Defendants' Number 7 for identification?

21 A. Yes, sir.

22 Q. Take a look at that and see if that -- if you know what  
23 that is.

24 A. This is the police report where Mr. Refugio Ramirez was  
25 arrested.

1 Q. Could you speak in the microphone?

2 A. My apologies. This is the police report that we were  
3 talking about with Refugio Ramirez -- Refugio Ramirez's arrest  
4 with the .22-caliber firearm.

5 MR. ERTEL: And that's -- Judge, I move for the  
6 admission of the Defendants' Exhibit 7.

7 MS. GROOVER: No objection, but with respect to the  
8 personal identifying information, we would ask that it remain  
9 under seal.

10 MR. ERTEL: I have no objection to that.

11 THE COURT: It's admitted under seal.

12 MR. ERTEL: Thank you, Judge.

13 Q. (By Mr. Ertel) Let me clarify, you did not know it was a  
14 derringer?

15 A. No, no. I did not -- I'm not well versed with how many  
16 rounds of ammunition it carries.

17 MR. ERTEL: That's what I thought. I just had to  
18 clarify. Judge, I think that's all the questions I have right  
19 now, for good.

20 THE COURT: Ms. Groover, any redirect?

21 MS. GROOVER: Two very brief questions.

22 THE COURT: Very brief.

23 REDIRECT EXAMINATION

24 BY MS. GROOVER:

25 Q. You were asked on cross-examination to find in the

1 transcript where Joel Reyes referred to --

2 INTERPRETER GONZALES: Interpreter would ask you the  
3 please slow down.

4 Q. (By Ms. Groover) You were asked to find in the transcript  
5 the conversation about where Joel Reyes talked about Pablo  
6 talked about having Mr. Montoya killed. I direct your  
7 attention to Pages 15 and 16 in Government's Exhibit 6 and ask  
8 if that refreshes your recollection?

9 A. It does, yes, ma'am.

10 Q. And what exactly did he tell you?

11 A. "So that is where the problems stemmed from; I was told by  
12 the general, so at the end I was told by Eliud, he said Mister,  
13 do you want to send a letter; I told him I don't want trouble  
14 for you or because he should tell me" -- it says  
15 "unintelligible" -- "that it was possible they fired him and all  
16 that, I told him, Mister, stop doing that because I know that  
17 there could be problems," and then it said, "Did you do that,"  
18 and then he goes into "Because Rangels are big, that family is  
19 big here, the Rangels, the Rangels," and it continues on.

20 Q. Is that the portion of the conversation where you  
21 interpreted that --

22 A. Correct.

23 Q. -- as explained in your affidavit?

24 A. Correct, and it goes on to "I asked him if he thought that  
25 Pablo could kill them"; he said, "No, he could have sent

1 somebody."

2 Q. And then also referring your attention to the transcript,  
3 which I believe is Defense Exhibit 5, of your previous testimony  
4 before Judge Smith in the matter concerning Mr. Hipolito  
5 Martinez Martinez, the question was whether or not you provided  
6 any additional information to the magistrate. I direct your  
7 attention to Page 31.

8 Prior to you being asked the question by The Court, did  
9 you explain that you did, in fact, summarize your case in so  
10 many words?

11 A. Correct.

12 Q. Under oath?

13 A. Correct.

14 MS. GROOVER: Thank you. I have no further questions,  
15 Your Honor.

16 MR. ERTEL: Judge, I only have -- if I may just briefly  
17 as to something that was just covered.

18 THE COURT: Very briefly, Mr. Ertel.

19 MR. ERTEL: Yes.

20 RE-CROSS-EXAMINATION

21 BY MR. ERTEL:

22 Q. Do you remember testifying in front of Judge Smith?

23 A. The specifics, it was a while ago.

24 Q. And do you remember being asked this question. Look at  
25 Page 22 at the bottom beginning on Line 22.

1 "And what specifically did he tell you about the murder  
2 suspect?"

3 Your answer was, "He said that the murder suspect had  
4 problems with the victim; specifically he said that if he didn't  
5 back off pressuring the fact that the suspect was an illegal  
6 alien, I guess picking on the actual the illegal aliens as well  
7 as pressuring them for money" --

8 THE COURT: Mr. Ertel.

9 Q. (By Mr. Ertel) I'm sorry. "Picking on the actual, the  
10 illegal aliens as well pressuring them for money, he was  
11 actually going to have him killed. Those were his exact  
12 words."

13 Did you tell Judge Smith that those were his exact words?

14 A. Yes.

15 Q. And they are not his exact words?

16 A. I don't -- I don't know the specifics. I know Mr. Joel  
17 Reyes was interviewed multiple times. I don't know which  
18 statement that could have come from.

19 Q. The next one was in May of 2019. This hearing is December  
20 of 2017.

21 A. No, no, Joel Reyes was interviewed several days -- he was  
22 interviewed a second time. I don't know the specifics of that  
23 interview.

24 Q. Okay, so those were his exact words?

25 A. As far as I can remember, sir. I can't -- I didn't go

1 over my notes from, if it came from that interview, I didn't go  
2 over those specific notes.

3 Q. But that's your testimony to Judge Smith, "Those were his  
4 exact words"?

5 A. As far -- I mean, I can't -- I don't know.

6 MR. ERTEL: That's it. That's all I have, Your Honor.

7 THE COURT: All right. Thank you. You can step down.

8 THE WITNESS: Thank you, Judge.

9 Judge, I've got these documents here.

10 THE COURT: You can leave them there.

11 MR. ASINC: Judge, one housekeeping matter, I just make  
12 a motion out of an abundance of caution that all the exhibits to  
13 include the stipulation that Mr. Ertel has introduced on behalf  
14 of Pablo be introduced on behalf of our client as well, Juan  
15 Rangel-Rubio.

16 THE COURT: I assume there's no objection to that.

17 MS. GROOVER: There's no objection. I think they are  
18 joint motions.

19 MR. ERTEL: It's a joint motion.

20 THE COURT: Ms. Groover, I understand that's the  
21 Government's only witness.

22 MS. GROOVER: That's correct.

23 THE COURT: Any additional documentary evidence?

24 MS. GROOVER: No, sir.

25 THE COURT: Mr. Ertel, I understand you have no

1 witnesses; correct?

2 MR. ERTEL: No witnesses, Your Honor.

3 THE COURT: You-all have both requested oral argument.  
4 I will note again that the briefing is extensive. I've reviewed  
5 all the briefing.

6 Let me ask Mr. Ertel, there was a request related to the  
7 earlier motion about an opportunity for supplemental briefing in  
8 light of the transcript. Is that the same request that you  
9 would make for this motion as well?

10 MR. ERTEL: Yes, Your Honor.

11 THE COURT: Ms. Groover, Defendants are asking for an  
12 opportunity to brief this issue up. I'm going to take up a  
13 schedule for that in just a moment, but do you have any oral  
14 argument you would like to present today?

15 MS. GROOVER: I do.

16 THE COURT: We've been going for quite a long time.  
17 We're going to take a ten minutes for a comfort break, and then  
18 I will take up the supplemental briefing schedule as well. We  
19 will be in recess.

20 (Recess from 4:15 p.m. to 4:32 p.m.)

21 THE COURT: Ms. Groover, are you prepared to make your  
22 argument?

23 MS. GROOVER: Yes, Your Honor. Thank you.

24 There's no evidence that the witness, the affiant had  
25 any deliberate falsity in this particular case. No, instead

1 what we have is an investigator that showed up and went to work.  
2 The day before the murder, he was coming off of two to three  
3 hours' sleep and no food and working from a separate murder the  
4 day before. He worked fast to get his investigation moving to  
5 preserve evidence and then to try to solve these murders. That  
6 was his goal.

7 Looking back three years later reviewing the affidavit  
8 with a fine-tooth comb, we can see a few misstatements and  
9 omissions from a man who was working back-to-back homicides with  
10 one goal to mind, try to resolve these cases and preserve his  
11 evidence.

12 The only explanation for these few misstatements and  
13 omissions is that he was very, very busy working these  
14 homicides. He wasn't trying to deceive The Court. Not even  
15 trying to -- he wasn't trying to lie to The Court at all and  
16 hide the evidence. He was trying to quickly summarize a rapidly  
17 moving investigation and quickly preserve the evidence by  
18 getting a warrant.

19 He didn't leave anything out that was important, that  
20 was material to probable cause in his mind. I recognize that's  
21 The Court's decision, but at the time of his investigation he  
22 felt he was putting what he needed to put in there and nothing  
23 was left out that was important to him.

24 There was zero evidence that he was trying to deceive  
25 the judge, and that is significant because, quite frankly, he

1 accomplished a lot in a very short amount of time with a little  
2 bit of sleep, and it was important to note that, based on what  
3 was apparent by his work ethic, what he was trying to do is he  
4 was trying to solve these crimes and present evidence to get  
5 his -- preserve his warrants and not deceive The Court at all.

6 This is simple negligence and innocent mistakes. This  
7 is the very situation why the Supreme Court allows negligence or  
8 innocent mistakes in these types of situations.

9 The defendant offers three offers of proof, the unedited  
10 transcript of Joel Reyes, the fact that the firearm remains in  
11 Property in evidence and there is only one EEOC complaint.

12 First, with respect to the EEOC complaint, that's just a  
13 poor choice of words. He was referring to the previous EEOC  
14 complaint in the affidavit, and when you read the affidavit in  
15 its entirety, that's what he meant by it. Yes, he could have  
16 used better terminology, but it wasn't to somehow deceive The  
17 Court and suggest that were multiple complaints being made.

18 But when you read the edited transcript in its entirety,  
19 you can surmise, as Detective Rodriguez did, that Reyes was an  
20 employee who submitted the letter by way of adoption.

21 If you look at Page 7 of the transcript, Detective  
22 Rodriguez asked, "This is all true; right?" And Reyes  
23 responded, "Yes, that is there" -- "Yes that is there is true,"  
24 and Reyes adds, "The signature is -- was not mine."

25 The next page begins with "This letter was made by

1 whom?" And Reyes responds, "Eliud, no, he made this for sure,  
2 this."

3 Detective Rodriguez referred to the letter and  
4 clarified, "This?" And Reyes responds, "Hm, yes, since," excuse  
5 me, "and, hm, since I did not sign he did not tell me about the  
6 letter."

7 So there, "this," there are several of these letters.  
8 Reyes later goes on to explain, "So like right now there are  
9 letters," and there was a pause, "a letter that -- that  
10 supposedly were signed for the company; I mean they were people  
11 who signed including my, my; he also asked for my; I did not  
12 send the letter; someone signed it, but, yes, it was suddenly an  
13 agreement between us."

14 It's important in that conversation, it's an important  
15 word that was missing from the initial transcript, the unedited  
16 transcript, the "including me." You can also hear it in the  
17 audio and you can read it in the Spanish of the transcript,  
18 "inclusio," and so when -- "including me" means he was adopting  
19 the statement, and that is what the witness testified that he  
20 took that to be, and also when you put the "T" next to the "his"  
21 in Exhibit 7 on Page 3 of 4 in Paragraph 6 of the affidavit,  
22 then from reading the transcripts from Page 7 and 8 and  
23 correcting the typo to make it "this letter," it is clear that  
24 he's referring to this letter, from the conversation where they  
25 kept pointing "this letter," "this letter." It should have been

1 said "this," not "his," a typo from a man who was working two  
2 homicides with two to three hours of sleep.

3 The facts that he relied on upon the edited transcript  
4 in his entirety is correct. Joel Reyes did not sign the letter  
5 but he adopted it as his own and absolutely that information  
6 should have been in the affidavit, and he should have been very  
7 clear with The Court exactly what was said and what was signed  
8 and what was not signed, but it's not material to probable cause  
9 because he did, in fact, adopt the general statement.

10 Rodriguez was allowed to summarize the interview in the  
11 affidavit.

12 Another misstatement that should have been corrected and  
13 should have been fixed is the fact that Reyes did deny paying  
14 the \$1500.00, but it is important to note the Reyes does  
15 acknowledge paying Pablo for the use of the social security  
16 number. Regardless of how that \$1500.00 was paid or any  
17 confusion in Detective Rodriguez's mind with that conversation,  
18 that financial arrangement should have been clarified, no doubt,  
19 in that affidavit, but again, it's not material to the issue of  
20 probable cause.

21 It is immaterial if some illegal aliens paid Pablo  
22 \$1500.00 and others did not but all to use identities to work.  
23 What matters is that Pablo is hiring illegal aliens for the  
24 company, and then at the end of the day, Detective Rodriguez  
25 took it to mean as Mr. Montoya would be killed because of the

1 complaint.

2 Other than the payment issue and the not signing, the  
3 entire edited transcript gives the reader a clear understanding  
4 that Reyes was an employee who adopted the letter to the EEOC in  
5 support of Mr. Montoya's complaint and that Reyes believed that  
6 Pablo would have Montoya killed and he had family that could do  
7 it.

8 It is true that Reyes, another important  
9 misunderstanding and misstatement, it's true Reyes never saw  
10 family members with a gun and it was omitted from the affidavit,  
11 and absolutely that should have been in there. It should have  
12 been in there. There is no evidence that he was deceiving and  
13 trying to trick the judge by not putting it in there because, as  
14 he further testified and indicated in the transcript, Reyes does  
15 say, "But there could be guns in the house," and that was also  
16 omitted, though. It's important to note that was also omitted,  
17 when he acknowledges there could be guns in the house.

18 I think an evidence of trickery and deceit would be if  
19 the affiant puts in there that could be evidence of guns in the  
20 house but leaves out the fact that he never saw them with them.  
21 Both of the statements about the guns are left off, and he  
22 testified, because, again, although it's not his determination,  
23 in his mind, that wasn't relevant. The relevance was that he  
24 had family members who could kill him and that there was a  
25 family member that he was aware that was arrested with a .22-

1 caliber firearm.

2           So in his mind, it's not material to PC, so he was not  
3 trying to deceive it. In this situation, it's not material to  
4 probable cause because there was evidence that still supported  
5 probable cause. You had an extremely busy detective who was  
6 trying to solve two murders without any sleep. Nothing to  
7 intentionally deceive The Court.

8           And finally there is no evidence that Detective  
9 Rodriguez had actual knowledge that the gun seized in 2014 was  
10 still in evidence, and he testified, based on Garden City's  
11 procedures, that it's possible the gun could be gone, given to  
12 someone who could lawfully possess it and then get back in the  
13 arms of the illegal alien, so it was a possibility, and at the  
14 time on the weekends, in the evenings, he was not able to  
15 confirm and he did not know, in fact, where the gun, if the gun  
16 was, in fact, still in Property evidence, but again it's not  
17 material to the probable cause, that Pablo was a suspect, had  
18 family that lives on the property, that had access at one point  
19 to a small-caliber weapon.

20           You could take out all of the inaccuracies and look at  
21 the four corners of the warrant and there would still be  
22 probable cause because there is remaining strong facts that are  
23 outlined in the affidavit that establish probable cause to  
24 search this residence, if you take out all of the misstatements  
25 and omissions, again that were not intentional.

1 First, Defendants do not challenge the veracity of  
2 making the statements to Pablo that his family members -- excuse  
3 me, that family members are accusing Pablo as being the murderer  
4 in this case. They don't challenge that. So that is  
5 information that is leading the detective to narrow in on Pablo.

6 The affidavit recounts Mr. Montoya's wife also  
7 identified Pablo as a person likely to have murdered Mr.  
8 Montoya, and she corroborates that, the information provided by  
9 the mother and the sister.

10 They explain the difficulties that Mr. Montoya had with  
11 his boss, Mr. Pablo Rangel-Rubio, and explain the problems  
12 became so serious that Mr. Montoya went to a federal agency, the  
13 EEOC, and filed a complaint. That is not challenged.

14 What's also not challenged is that Mr. Montoya was  
15 acting as a whistleblower, exposing Pablo's scheme to employ  
16 illegal aliens, his scheme to syphon pay from employees, his  
17 scheme to unlawfully use the identities of others.

18 These witnesses and documents reflect motive, motive and  
19 more motive. The defendants also do not challenge facts in the  
20 affidavit that the Pablo Rangel-Rubio's role in Mr. Montoya's  
21 murder comes from a crime scene, which reflected that the murder  
22 was not a robbery gone wrong but rather would suggest that it  
23 was, in fact, an employee complaint relationship.

24 Mr. Montoya's vehicle had not been stolen. His phone  
25 and his wallet were not taken, and nothing appeared missing, all

1 of which suggests that the killing served a purpose other than  
2 to obtain the valuables. It corroborated what the witnesses  
3 were telling Detective Rodriguez. This is not challenged at all  
4 by the defendants.

5 Also they do not challenge Joel Reyes' statement  
6 acknowledging that Pablo Rangel-Rubio hired illegal aliens.  
7 They do not challenge Joel Reyes' statement that Mr. Montoya's  
8 whistle-blowing activity and they do not challenge that Reyes  
9 lacks -- that he lacked surprise that he was dead.

10 Specifically they do not challenge that Refugio lived at  
11 Pablo's estate, was known to previously possess a small caliber  
12 firearm consistent with that used in the murder and worked with  
13 the whistleblower, Mr. Montoya, and further they do not  
14 challenge that the defendant, that his uncle, Pablo was the  
15 target of the blown whistle and that Refugio had an outstanding  
16 warrant for his arrest, showing his prior illegal propensity had  
17 not been abated.

18 All of this is strong evidence supporting probable cause  
19 for this warrant that is not challenged when you take out of the  
20 misstatements or omissions. They do not have evidence of intent  
21 to deceive The Court on purpose.

22 We respectfully submit that the defendants have not met  
23 their burden of showing that these misstatements or omissions  
24 were intentional or reckless, let alone material to the probable  
25 cause, and we would respectfully ask that the motion be denied,

1 Your Honor.

2 THE COURT: Ms. Groover, before you sit down, a few  
3 questions. There is one challenge that you may not have  
4 addressed.

5 On Page 3 of 4 on the affidavit, in the sixth paragraph  
6 down starting with the words, "At 1900 hours," the second to  
7 last sentence, Detective Rodriguez states in his affidavit,  
8 "He," Joel Reyes, "stated he told the victim, Mr. Montoya, to  
9 leave Pablo alone," and that I believe is, that first portion of  
10 that sentence is supported by the interview transcript, that he  
11 told him there may be trouble, something to that nature, but  
12 then the second part of this sentence, "since he," Pablo, "was  
13 going to have him," Reyes, "killed." I've read the transcript a  
14 couple of times and I can't find any basis for that second part  
15 of that sentence.

16 MS. GROOVER: I do agree that that's not in the  
17 transcript, and so that does seem to be something that is  
18 another assumption, and so... but even taking that part out,  
19 Your Honor, it is accurate -- I don't believe it would affect  
20 the probable cause. "Joel Reyes does advise he doesn't think  
21 Pablo could kill him but he had family who could, who could kill  
22 him," and that is what is significant because it loops back into  
23 the fact that Pablo had a family member who was arrested with a  
24 .22-caliber firearm that was similar to the murder weapon and  
25 still had propensity to use, to do that.

1           THE COURT: I understand all the sort of other  
2 arguments, but the next sentence is dealing with a slightly  
3 different issue, which is Reyes' beliefs about who could have  
4 done this. The preceding sentence that I pointed you to is  
5 about what Reyes advised Mr. Montoya of before anything  
6 happened, and here, my question is focused on this.

7           I understand your arguments about probable cause  
8 generally, but that statement alone, would you agree that it's  
9 at least a material fact --

10          MS. GROOVER: Yes.

11          THE COURT: -- for the magistrate judge. Would that  
12 statement alone compared with the transcript not get the  
13 defendants at least at the point of obtaining a Franks hearing  
14 on the issue?

15          MS. GROOVER: Yes, Your Honor, I can see the argument,  
16 and having the hearing, I do agree it's important to have the  
17 hearing.

18          THE COURT: Here's my one other question, Ms. Groover.  
19 There was a lot of discussion about Detective Rodriguez's oral  
20 testimony to the magistrate and there was some back-and-forth  
21 references to the prior hearings before Judge Smith.

22          The question is a succinct one. What testimony, outside  
23 of what's in the affidavit, what oral testimony and what  
24 specific facts does the Government contend that I'm supposed to  
25 consider from oral testimony?

1 MS. GROOVER: Unfortunately, Your Honor, I don't think  
2 the specifics are known. As was testified today, it was just in  
3 general he explained his investigation like he explained his  
4 investigation to us here, and he outlined that that's his  
5 typical practice, and so unfortunately I don't believe we know  
6 exactly what was said.

7 As I recall, that was also the same problem that was  
8 addressed in that hearing as well, is that unfortunately under  
9 Georgia law, it was authorized to give oral testimony and  
10 unfortunately it was not preserved what exactly it was.

11 THE COURT: Let me just make sure I understand your  
12 position. If we don't know the specifics, I can't speculate  
13 about what circumstances of the investigation. We're just left  
14 with the evidentiary presentation here, what's in the affidavit,  
15 other documentary evidence that we have, but I can't pull some  
16 fact that may or may not have been discussed. Would you agree  
17 with that?

18 MS. GROOVER: I absolutely agree with that. There is no  
19 evidence before you that says exactly what clarifications if any  
20 were made to the judge.

21 THE COURT: Thank you, Ms. Groover.

22 MS. GROOVER: Thank you.

23 THE COURT: Mr. Ertel, we discussed whether y'all would  
24 like to present argument or not. You're not compelled to.

25 MR. ERTEL: I will do it in the brief, Judge. I don't

1 want to bore you with the same things twice.

2 THE COURT: Let's talk about the briefing and the  
3 transcripts. First let me confirm first, Mr. Martin, Mr. Ertel,  
4 Mr. Olive and Mr. Asinc, I want to confirm you-all are  
5 requesting transcripts of both days of full proceedings;  
6 correct?

7 MR. ERTEL: Correct, Your Honor.

8 MR. ASINC: That's correct, Your Honor.

9 THE COURT: I ask y'all to coordinate with the court  
10 reporters, plural, Ms. Gilbert and Ms. Root, to obtain that.  
11 While I don't know the timeframe for exactly when that will be  
12 provided, I can set a briefing schedule off whatever date the  
13 transcripts, complete transcripts, are available to defense  
14 counsel, and so what I will do is set a schedule that will  
15 require supplemental briefs to be submitted within 21 days of  
16 provision of the transcripts and then allow 14 days from that  
17 date for any responsive briefing, and again, you're not  
18 obligated to use all that time. I encourage you to get them in  
19 expeditiously, but that will be the schedule. That is anchored  
20 on an uncertain date in the future. But it will still be that  
21 21 and 14 days.

22 MR. MARTIN: Will you also allow us to respond if  
23 necessary to their response?

24 THE COURT: We're not going to have three rounds of  
25 briefing, Mr. Martin. I will ask y'all to try to brief

1 everything up you have in the course of your opening briefs.

2 MR. MARTIN: All right, fine.

3 MR. ERTEL: Judge, just so you know -- I don't know that  
4 it's going to be an issue -- I've got a probably a week-and-a-  
5 half-long trial starting August 2nd. I think we will  
6 probably -- it's going to come close.

7 THE COURT: If you need to modify that, file a written  
8 motion after you-all confer and propose a schedule at that  
9 point. Let's wait to modify it until we see what happens with  
10 the trial, what happens with the transcripts.

11 Let me confirm with all defendants' counsel, y'all are  
12 making this request in order to prepare your briefs to  
13 adequately defend your clients in this case. I want to confirm  
14 that y'all agree that that time should be excluded from any  
15 Speedy Trial calculation, confirming this case is still  
16 designated as complex and so it's likely all tolled anyway, but  
17 I want to confirm you would agree this time should be --

18 MR. ERTEL: On behalf of Pablo Rangel-Rubio, yes, Your  
19 Honor, we agree all time should be excluded from the Speedy  
20 Trial calculation.

21 THE COURT: Mr. Martin?

22 MR. MARTIN: Yes, we agree on behalf for Mr.  
23 Perez-Bravo.

24 THE COURT: Mr. Asinc?

25 MR. ASINC: Juan Rangel-Rubio also agrees, Judge.

1 THE COURT: Thank you very much. Mr. Olive, I think you  
2 might have chimed in. You agree as well?

3 MR. OLIVE: I do.

4 THE COURT: All right.

5 Ms. Groover, Mr. Howard, anything further to address  
6 from the Government at this time?

7 MS. GROOVER: Nothing from us.

8 THE COURT: Defense, first Mr. Ertel?

9 MR. ERTEL: No, Judge, thank you for the opportunity.

10 THE COURT: Mr. Martin?

11 MR. MARTIN: No, sir.

12 THE COURT: Mr. Asinc, Mr. Olive?

13 MR. ASINC: No, Your Honor.

14 THE COURT: That will conclude these proceedings. Again  
15 coordinate with the court reporters on obtaining those  
16 transcripts. Stick to that briefing schedule.

17 If there is a request for a modification, I will  
18 encourage you to try to keep it as short as possible.

19 MR. ERTEL: I will try to get it done. I would like to  
20 take some time off after that trial, so I would like to get it  
21 done beforehand.

22 THE COURT: That will conclude our proceedings and we  
23 will be adjourned.

24 (Proceeding concluded at 4:53 p.m.)  
25

CERTIFICATION

I certify that the foregoing is a true and correct transcript of the stenographic record of the above-mentioned matter.



06/26/2021

Debra Gilbert, Court Reporter

Date